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FEDERAL GOVERNMENT'S RELATIONSHIP WITH AMERICAN INDIANS

HEARINGS

BEFORE THE

SPECIAL COMMITTEE ON INVESTIGATIONS

OF THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

FEBRUARY 21, 22, 23, 27, 1989
WASHINGTON, DC

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SEXUAL ABUSE OF INDIAN CHILDREN

TUESDAY, FEBRUARY 21, 1989

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
SPECIAL COMMITTEE ON INVESTIGATIONS,
Washington, DC.

The special committee met, pursuant to recess, at 10:05 a.m., in room 216, Hart Senate Office Building, Hon. Dennis DeConcini (chairman of the special committee) presiding.

Present: Senators DeConcini, McCain, and Daschle.

Staff present: Kenneth Ballen, Mary Lou Soller, Michael J. Anderson, Dan Lewis, Mary Ellen Fleck, and Kathy Momot.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DECONCINI. The Special Committee on Investigations will come to order.

This week we commence our third week of hearings after more than 9 months' investigations. The first 2 weeks of the hearings, as the record shows, dealt in small part with child abuse and a great deal with the trust responsibility or lack thereof; tribal corruption; contracting and other matters. We will continue this week with our agenda on child sexual abuse, and we may even go into next week with BIA and Indian Health Service and other agencies to testify both as to the trust responsibility question and to answer questions from members, staff and counsel regarding accountability and why things happened or didn't happen and what kind of oversight and control is available within these agencies.

I yield now to the cochairman, Senator McCain.

STATEMENT OF HON. JOHN McCAIN, U.S. SENATOR FROM ARIZONA, COCHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator MCCAIN. Thank you, Mr. Chairman.

This morning our investigative hearing will continue its examination of the tragedy of sexual abuse of Indian children. Ten days ago we heard the heartbreaking testimony of Hopi mothers whose children had been molested by a teacher at a BIA school on the Hopi Reservation. The Hopi mothers described the trauma of child molestation and the need for more counseling services for child abuse victims at the Hopi Reservation.

Today and tomorrow we will examine the problem of sexual abuse on other Indian reservations. These witnesses will describe serious defects in the hiring, training, and supervision of Government employees who come into contact with Indian children. They will also describe shortcomings in the reporting of sexual abuse of children and inadequacies in the governmental response to reports of children being sexually abused.

We begin with witnesses from the Cherokee Reservation in Cherokee, NC. These witnesses will describe how Paul W. Price, a teacher at the BIA elementary school at Cherokee, continued to teach even after numerous allegations of child molestation had been made against him. Mr. Price was an elementary school teacher at Cherokee from 1971–85. Mr. Price's history of molesting children was reported to BIA officials at the school as early as 1971 and at other times, yet Mr. Price continued to teach young children.

In 1986, after Mr. Price had been teaching at Cherokee for 14 years, he was sentenced to 10 years in prison for molesting one of his students, an 8-year-old boy.

The *Price* case illustrates the tragic consequences of the failure of the BIA to investigate and report the sexual abuse of school children. Currently, there is no Federal law that requires that information concerning the sexual abuse of children be reported to social service agencies or to law enforcement authorities. In contrast, all 50 States have some type of child abuse reporting law. Thus, a gap clearly exists in the laws on reporting on Indian reservations.

Through the testimony we hear today and tomorrow we will identify the problems of sexual abuse of children and hopefully identify more realistic solutions to this critical problem.

Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Senator McCain.

In our society, as we know, the problems of sexual abuse and incest certainly permeate and infiltrate all our society, Indian and non-Indian. It is a social problem which, in my judgment, this country has never dealt with openly by admitting it in the first place, and second, with few efforts to not only have law enforcement but to have the proper type of counseling and efforts to reverse this tragic thing that is happening to children and families alike.

This morning our first panel will be a number of parents; also, a psychologist from the Smokey Mountain Mental Health Clinic. First I want to thank them for taking the time to be here and for the letters they have written to us. I have read them over the weekend. These are tragic incidents, and by their willingness to come forward I hope that this will not only be constructive in the sense of making a clear record, but will help in improving the quality of services that need to be available.

Our first panel will consist of Patricia Tramper; Keneitha Haigler; Larry Blythe; and Elizabeth Shiek. If you would please come forward.

[Witnesses sworn.]

I will yield to Associate Counsel Michael Anderson for the questions.

Mr. ANDERSON. Thank you, Mr. Chairman.

For the record I will have the witnesses identify themselves from left to right.

Mr. **BLYTHE**. Larry Blythe.

Ms. **SHIEK**. Elizabeth Shiek.

Ms. **HAIGLER**. Keneitha Haigler.

Ms. **TRAMPER**. Patricia Tramper.

Mr. **ANDERSON**. Thank you for joining us today, and we will begin with our first witness, Patricia Tramper.

STATEMENT OF PATRICIA TRAMPER, PARENT OF VICTIM, CHEROKEE, NC

Mr. **ANDERSON**. Could you please state where you are employed, Ms. Tramper?

Ms. **TRAMPER**. I work at the Cherokee Elementary School, Cherokee, NC.

Mr. **ANDERSON**. What are your responsibilities at Cherokee?

Ms. **TRAMPER**. I work for the Chapter I program, grades 3 through 6.

Mr. **ANDERSON**. Are you a teacher's aide at that school?

Ms. **TRAMPER**. Yes.

Mr. **ANDERSON**. What are your responsibilities as a teacher's aide?

Ms. **TRAMPER**. I teach language and reading to the Chapter I students.

Mr. **ANDERSON**. Is that school located on the Cherokee Reservation?

Ms. **TRAMPER**. Yes.

Mr. **ANDERSON**. Is that school operated by the Bureau of Indian Affairs?

Ms. **TRAMPER**. Yes.

Mr. **ANDERSON**. How many children do you have?

Ms. **TRAMPER**. Personally?

Mr. **ANDERSON**. Yes.

Ms. **TRAMPER**. Three.

Mr. **ANDERSON**. All right. What are their ages?

Ms. **TRAMPER**. A daughter, age 13; a son, age 11; and a daughter, age 22 months.

Mr. **ANDERSON**. Did your son attend the Cherokee Elementary School in 1985?

Ms. **TRAMPER**. Yes.

Mr. **ANDERSON**. What grade did he attend at that school in that year?

Ms. **TRAMPER**. Third grade.

Mr. **ANDERSON**. Was Mr. Paul Price his teacher that year?

Ms. **TRAMPER**. Yes.

Mr. **ANDERSON**. Was Mr. Price his only teacher that year?

Ms. **TRAMPER**. Yes—well, until he was dismissed.

Mr. **ANDERSON**. All right.

Ms. Tramper, could you tell the committee what happened that year with Mr. Price being your son's only teacher, and what incident occurred around Halloween of 1985?

Ms. **TRAMPER**. On October 31 I was called to the office of the principal, Patsy Jones, and was spoken to by Mr. John Spees, FBI.

He asked me if I was aware of allegations made against Mr. Price for molesting the children. At that time I had no idea.

They also asked me if I was aware that my son also had been involved. Again, I had no idea.

Mr. ANDERSON. Prior to that time, before being contacted by the FBI, had you had any indication that your son might be the subject of or a victim of child molestation?

Ms. TRAMPER. I wondered about his behavior that year because his attitude toward school had changed completely. He had gone from a child who loved to go to school to someone who was always sick or making excuses, not wanting to go to school. That was not my son.

Mr. ANDERSON. Did that, the making of excuses and not wanting to go to school, did that begin in 1985 when he began the third grade in Mr. Price's classroom?

Ms. TRAMPER. Yes; it did.

Mr. ANDERSON. How did the FBI come to find out about these allegations about your son's teacher?

Ms. TRAMPER. One of the other children in that classroom who was also being molested had told his family and they had contacted the authorities.

Mr. ANDERSON. Did the FBI then contact you?

Ms. TRAMPER. Yes.

Mr. ANDERSON. When you first talked to your son about this incident, did he admit that he had been molested?

Ms. TRAMPER. No; he didn't.

Mr. ANDERSON. Did he deny it at first?

Ms. TRAMPER. He said that—well, I could tell by talking to him that he wasn't telling me what he knew because he would kind of just sit with his head down and say "No, I don't know anything."

Mr. ANDERSON. Did he later admit to you or somebody in his——

Ms. TRAMPER. He told his father that yes, Mr. Price had been fondling him in the bathroom and in the classroom.

Mr. ANDERSON. Was that one time, or was that throughout the school year?

Ms. TRAMPER. It was up until October 31 of that year.

Mr. ANDERSON. So the activity began from the start of the school year and went through until Halloween of 1985?

Ms. TRAMPER. Yes.

Mr. ANDERSON. Did you notice any changes in your son's grades that year?

Ms. TRAMPER. That year he had made straight Fs. He's a good student. He does well in school. Since then he has won awards in different things, but that year it was straight Fs.

Mr. ANDERSON. Is it your belief that the straight Fs were as a direct result of being molested by his teacher, Mr. Price?

Ms. TRAMPER. No doubt in my mind that that's what it was.

Mr. ANDERSON. When did your son first get his report card for the fall of 1985?

Ms. TRAMPER. It was in October. That's when the first grading period usually ends. I was shocked because, like I said, he's always been a good student.

Mr. ANDERSON. Did you visit Mr. Price afterwards?

Ms. **Tramper**. Yes; I did. I went right there the next day after I got that report and asked him what the problem was, because he had never—I work in the school. I was right there. Mr. Price saw me every day because I would have to go and pick up children for the Chapter I program from his classroom. He saw me all the time. He could have stopped me and said "Hey, your son is failing this or not doing this." He never once came to me with a low grade concern or that Emerson wasn't doing the work required to pass.

I was shocked when I got his report card.

Mr. **Anderson**. What reason did Mr. Price give you for your son's low grades?

Ms. **Tramper**. He told me that I babied him too much, that I should cut my apron strings and let him grow up a little bit, that I was too protective of him, and that I should give him a little more freedom.

Mr. **Anderson**. Did he also ask you whether he could give your son rewards, as well?

Ms. **Tramper**. Yes; he did. My son has been hyperactive since the day he was born. In the third grade he was very hyper. He had been all through school and I knew that. I was aware of that. But Mr. Price came to me one day and asked me if I would object to him giving Emerson a reward-type thing, maybe a chocolate bar or Coke or something, to kind of get him to do his work.

Mr. **Anderson**. Were you aware whether Mr. Price was giving other children rewards as well?

Ms. **Tramper**. Yes; I was. I had seen it myself.

Mr. **Anderson**. Prior to this semester when your son had started school, had you ever heard any rumors or allegations about Mr. Price concerning possible molestation of children?

Ms. **Tramper**. Yes; I had.

Mr. **Anderson**. What were the types of rumors you were hearing?

Ms. **Tramper**. Well, I have worked in the school system for 17 years now. I moved to the elementary school in 1979. About 2 years after I had been a teacher's aide at the elementary school I worked with another teacher who was very concerned about Mr. Price's behavior. He was in the special education classroom at that time and he was just across the hall from where our classroom was located. She had seen him doing things to the children. She became upset several times throughout that year. Of course, she would come back and express her disgust and concern about the activities going on in that classroom.

Mr. **Anderson**. Did this make you reluctant to put your son in his classroom?

Ms. **Tramper**. Yes; it did. When I think about it, some of the other teacher's aides at the school also had children in that class. We figured, well, we work here; surely he won't try to bother one of our children.

Mr. **Anderson**. After the FBI learned about these allegations—you stated that your son denied it at first. Did Mr. Price threaten your son?

Ms. **Tramper**. Yes; he did.

Mr. **Anderson**. What was the nature of his threat?

Ms. **Tramper**. Well, after he had finally admitted that Mr. Price had been threatening him, we asked him what he had said to make him not want to tell us. He said that Mr. Price had told him that if he told, that he would cut off his penis and turn him into a girl if he was going to be that childish and behave like one.

Mr. **Anderson**. Do you think that after the charges came out, Mr. Price took these allegations seriously?

Ms. **Tramper**. I don't think he ever took anything seriously because—it's like he knew all along that nothing was going to happen to him, like he was protected or something. Even on that day—like I told you, it was Halloween, and he came dressed as a prisoner with the cap and the stripes and the number on his shirt and everything.

Mr. **Anderson**. This was after he had already been questioned by the FBI?

Ms. **Tramper**. I think so.

Mr. **Anderson**. Mr. Price pled guilty to molesting a child in 1986 and was sentenced to 10 years in prison. Is that right?

Ms. **Tramper**. Yes.

Mr. **Anderson**. After the sentencing, what was the response of the school to your son and to your family situation, with your son having been the victim of Mr. Price?

Ms. **Tramper**. Even after the man had stood and pled guilty in Bryson City—we knew he was guilty anyway; we had no doubts—one of the administrators in our school still stood and said, "Well, I'll never believe it. I don't believe it, and if he stood and told me right to my face I wouldn't believe it."

Mr. **Anderson**. How did that make you feel?

Ms. **Tramper**. I was very upset. I was very, very upset.

Mr. **Anderson**. Ms. Tramper, you've asked that we enter into the record a letter that you have sent.

At this time I would like to ask that that be made part of the record.

Senator **DeConcini**. Without objection, Ms. Tramper's letter of February 12, 1989 to the Special Committee on Investigations will be inserted in the record.

[Letter from Ms. Tramper follows:]

CHEROKEE, NC, *February 12, 1989.*

SPECIAL COMMITTEE ON INVESTIGATIONS,
Hart Senate Office Building, room 901, U.S. Senate, Washington, DC.

DEAR MR. ANDERSON: I am writing to express my anger and total disgust at the way our Cherokee Elem. School administrators have handled reported cases of sexual abuse on our children in the years past.

On Oct. 31, 1985 I was made aware of charges being brought against my son's third grade teacher for sexual misconduct. Mr. Paul Price was the teacher and I was asked at that time if I knew anything about the alleged charges being brought by John Haigler's mother, Nita. My son had never mentioned to me about the goings on in the bathroom and classroom, however, I had been concerned about his failing grades. My son did not have the enthusiasm about school this particular year as he had always had in the past. I had spoken to Mr. Price a couple of times about my son's low grades. Mr. Price at that time insinuated that my "apron strings" were "too tight," and that I should allow my son more independence and freedom.

After the investigation had begun, I found out that my son was also a victim of Mr. Price's sexual advances. Eventually my son told me about the threats that Mr. Price had made to him if he told anyone. The most sickening one was the threat that he would cut off my son's penis and turn him into a girl. My son also told this story to Mrs. Toni Tahquette who was the juvenile officer with the Cherokee Police

Dept. at that time. Afterwards I found out that other little boys in that same class had been threatened with the same thing.

I was present when the children (4 boys) told their stories, one at a time, and I was horrified at the sad story each one told. It was one of the saddest days of my life as I sat and watched the fear come across each little boy and the tears flow down their faces as they had to remember and tell what this sickening person had done to them.

Thinking back over years past, I recall that in 1979, there were rumors about Mr. Price circulating in the community, but even then no one, to my knowledge, had actually seen him do anything. It wasn't until the school year 1981-1982 that this same subject was brought to my attention again. I was an aide in second grade. The teacher I worked with was Lana Boyd. She had expressed much concern about the way she had seen Mr. Price "handle" the little boys in his Special Education class. She mentioned several times throughout that school year, that she was going to write a complaint about Mr. Price because she had seen him touch some of the children in places that he shouldn't. I can't help but believe that she did indeed report this because she felt so strongly about it. She moved to Texas after that year and I have not been in contact with her since.

Since the knowledge was made common to everyone in this area, about Mr. Price pleading guilty to the charges of taking indecent liberties with a minor, I have come in contact with other people who had known about Mr. Price's sexual behavior involving other children in our school. These people also reported Mr. Price to the school nurse, Frela Beck, and our elementary principal Mary Ann Widenhouse. A close friend of mine who just happen to be an eye-witness to Mr. Price's sexual advances on a young boy, reported what she had seen and was made to feel like she was making false accusations about Mr. Price and was told that it was out of her (the witness's) hands and for her not to discuss it any further with anyone. Not until 1985 was her report ever made known to the authorities.

My main complaint is this, several children could have been spared the anguish, the fear, the embarrassment and the humility that I am sure they were put through and may still be suffering from, had the administrator in charge carried out the investigation. Had she turned the matter over to the authorities then and let them check it out, our children could have been spared. Why was nothing done years ago? Why did my child have to go through the nightmare as others did, years after the man was reported? Questions such as these will probably never be answered to my satisfaction, but I hope and pray to God, that something is done to keep such a thing from ever happening in our school again. Something must be done to ensure our children's protection as well as the people who were concerned enought to speak out. Punishment should await those who fail to follow through with such reports.

I feel that more than Mr. Price's crime was committed. A second crime is still going unpunished, the crime of negligence! Such failure to report, I feel, is also a crime.

Thank you for letting me express my feeling and concerns.

Respectfully,

PATRICIA S. TRAMPER.

Mr. ANDERSON. Ms. Tramper, you have also requested that you be allowed to read a paragraph from your letter, and at this time I would like you to proceed.

Ms. TRAMPER [reading].

> My main complaint is this. Several children could have been spared the anguish, the fear, the embarrassment and the humility that I am sure they were put through and may still be suffering from, had the administrator in charge carried out the investigation. Had she turned the matter over to the authorities then and let them check it out, our children could have been spared. Why was nothing done years ago? Why did my child have to go through the nightmare as others did, years after the man was reported? Questions such as this will never be answered to my satisfaction, but I hope and pray to God that something is done to keep such a thing from ever happening in our school again. Something must be done to ensure our children's protection as well as the people who were concerned enough to speak out. Punishment should await those who fail to follow through with such reports.

Mr. ANDERSON. Thank you, Ms. Tramper. If you remain seated, we will have some follow-up questions after the panel is complete.

Let me turn to the next witness, Keneitha Haigler.

STATEMENT OF KENEITHA HAIGLER, PARENT OF VICTIM, BIRDTOWN, NC

Mr. ANDERSON. Ms. Haigler, is your nickname Nita?

Ms. HAIGLER. Yes.

Mr. ANDERSON. Where do you live, Nita?

Ms. HAIGLER. In Cherokee.

Mr. ANDERSON. How may children do you have?

Ms. HAIGLER. Three.

Mr. ANDERSON. How many sons and daughters?

Ms. HAIGLER. I have a daughter, 14; a son, 11; and a son, 7.

Mr. ANDERSON. Was your son also a student at Cherokee Elementary School?

Ms. HAIGLER. Yes.

Mr. ANDERSON. Was your son also in the same classroom as Ms. Tramper's son?

Ms. HAIGLER. Yes.

Mr. ANDERSON. Did Mr. Price also molest your son?

Ms. HAIGLER. Yes.

Mr. ANDERSON. How did you learn of this? Did the FBI first inform you of this?

Ms. HAIGLER. No; my son always slept by himself, and for a while he had to sleep with my daughter. He had real bad nightmares. She came into the living room one night and she said, "You need to speak to John." And I went in there. He had a blanket over his head. I asked him what was wrong, and then he told me. He told me that he was scared to tell me because I had always told him to mind and to behave and to do what he was told.

Mr. ANDERSON. Then what did he tell you?

Ms. HAIGLER. He told me what his teacher had been doing to him in the bathroom and in the classroom and in the hallway and in the lunchroom.

Mr. ANDERSON. Was his teacher Mr. Paul Price?

Ms. HAIGLER. Yes.

Mr. ANDERSON. Was there any indication prior to your conversation with your son that led you to believe he was having trouble at school?

Ms. HAIGLER. He was sick in the mornings. He never wanted to go to school. But I thought, well, he's a little boy; it would be kind of normal for him not to want to go. He would always ask, "What's today? How many more days do I have to go to school?"

He had nightmares at night and he would beat the walls. You could hear him all night long beating the walls. He drew pictures, terrible pictures of blood and fire. You never saw a flower or saw grass. But I didn't know.

Mr. ANDERSON. After you had talked to your son about this, did you contact the school or the FBI?

Ms. HAIGLER. I called my school board member that night and got her out of bed and told her. She told me to meet her in front of Mr. Wahnee's office the next morning.

Mr. ANDERSON. Who was Mr. Wahnee?

Ms. HAIGLER. He was the superintendent or—he was over both schools.

Mr. ANDERSON. What did you tell them Nita?

Ms. HAIGLER. I told him what John had told me.

Mr. ANDERSON. What was their response or their reaction to this news?

Ms. HAIGLER. They never even said, "Well, are you sure?" They understood. They knew about it. He said, "We're in the process of putting windows in those doors down that hall to discourage this kind of thing, but we can't just put a window in his door because he would get us with discrimination." And like a week later, they had windows in those doors.

Mr. ANDERSON. Did they seem surprised at this allegation?

Ms. HAIGLER. It was like, "We've been waiting for somebody to say something."

Mr. ANDERSON. After your conversation with the school board officials, what did you do next?

Ms. HAIGLER. He told me to go home and write a letter and bring it back. Then they called in the police, Tony Talkwood, and she came to the house, and then John Spees came, the FBI man came and talked to John.

Mr. ANDERSON. Were you satisfied with the response of the FBI to your complaint?

Ms. HAIGLER. They were very nice.

Mr. ANDERSON. Did they then begin an investigation of this incident?

Ms. HAIGLER. Yes; John had to go to the hospital. They wanted to do an exam of John to make sure that he was all right. Cherokee Hospital sent us right to Smokey Mountain Mental Health and we started going there.

Mr. ANDERSON. What have been your experiences with the Smokey Mountain Mental Health Clinic?

Ms. HAIGLER. They are terrific. They have helped John a whole lot.

Mr. ANDERSON. Are you also receiving therapy or treatment from the Smokey Mountain Mental Health Clinic?

Ms. HAIGLER. Not right now, but we did go for a long time. I don't know how long.

Mr. ANDERSON. Ms. Haigler, you also sent a letter to the committee——

Ms. HAIGLER. Yes.

Mr. ANDERSON [continuing]. Stating a complaint that you had against the Government. I wonder if you could just summarize what your complaint was against the school and the treatment.

Ms. HAIGLER. It was like they were hiding it. You know, "We'll just shove this under the rug and he'll retire and we won't have to worry about it."

Mr. ANDERSON. You mentioned that they did not seem at all surprised by this type of activity by Mr. Price? Is that correct?

Ms. HAIGLER. Well, I had a school board member who told me that she knew he was like that all along.

Mr. ANDERSON. If you had known this information beforehand would you have placed your son in Mr. Price's class?

Ms. HAIGLER. I would have taken my son out of the school totally, and I did right after. I put him in a public school.

Mr. ANDERSON. How is your son now?

Ms. **Haigler**. They wanted to fail him in third grade, and I said they couldn't, that it would be like he had done something wrong. I told them that they couldn't fail him. They wanted to fail him in fourth grade, and I said he wasn't ready.

In fifth grade I thought, well, he's getting older; he's going to have to fail sometime. He's got to fail. So they failed him last year, and he's not making grades this year that are good enough to pass this year.

Mr. **Anderson**. Do you think this is as a direct result of the——

Ms. **Haigler**. He doesn't want to go to school. I don't blame him.

Mr. **Anderson**. All right. Thank you, Ms. Haigler.

I'd like to request that Ms. Haigler's letter also be made a part of the record.

Senator **DeConcini**. The letter that you sent to the committee, Ms. Haigler, dated February 7, 1989, will be part of the record.

[Letter from Ms. Haigler follows:]

Senator DeConcini
Special Committee on Investigations
U.S. Senate
Washington, DC

Senator DeConcini:

I am writing this letter to let you know what has happened to my son and my family. When my son John told me what his teacher had done to him I wanted to believe he had just made everything up, but he was just an eight year old little boy and there was no way he could have made it up. Of course I know that lots of little boys eight years old know about these things, but John was just an innocent little boy.

I have three children, two boys and one girl. Out of all of my children, John was the most trusting.

The morning I went to report what John had told me to the superintendent I expected to have to fight for what my son had told me, that I would have to convince them that John was not just making up something but that he was telling the truth. But what happened was right the opposite; they let me know that they had known what this teacher was doing and they were just waiting for some mother to come in and do something about it. My understanding was that they were worried about the teacher's rights because if they discriminated aganist him he could sue. I always thought that the school board, teachers, and superintendent were there to protect our childern but thats not the way it is at Cherokee Elementary. Isn't it a law that anytime anyone supects child abuse it is to be reported and why wasn't it? Just how many little boys have suffered because no one wanted to get involved. Mr. Paul Price was a government employee so I hold the government responsible for what has happened to my son.

The way the FBI and District Attorney treated my son was great; like he was important and had been through a tragic situation. They both were kind and considerate of his emotional state and feelings. Angela Ward, a therapist from Smoky Mountain Mental Health helped my son more than anyone else through months and months of counseling.

Cherokee Elementary School treated John like he was the one who had done something wrong. Roy Lambert, who is the assistant principal treated my son and me both as if we had prefabricated the story against Mr. Price. Mr. Lambert told me that Mr. Price was an innocent man and that John had fabricated the whole story. The day Paul Price plead guilty, I went to the school to see Roy Lambert. I felt like I deserved an apology and I expected him to give me one. He let me know real quick he did not owe me anything and Mr. Price was still innocent.

These are the kind of people running Cherokee Elementary School . Do children have no rights in Indian schools? I use to think Cherokee Elementary School was one of the finest schools around and now, well, if Cherokee Elementary School isn't going to look out for a child's welfare for making it a safe and happy place, then the school should be closed down. Let the children attend someplace where they will be safe; and where school officials and the school board care about the safety and well being of the children. The school officials should care about the children and not just their government jobs and big pay checks. Anytime a person allows something like this to happen because they don't want to "rock the boat" then I think someone higher up in the government needs to do a whole lot of cleaning house and hire some people who really care about the children, not the job and big pay checks. The goverment makes it a law that children have to attend school, then they hire people like Paul Price to teach our children. Then they leave the mothers to hear the night mares and the crying of their children because their child is terrified of going to school and what does the government do about it?

2-7-89

Keniethea Haigler

Mr. **Anderson**. At this time we will turn to Mr. Blythe.

STATEMENT OF LARRY BLYTHE, PARENT OF VICTIM, CHEROKEE, NC

Mr. **Anderson**. Mr. Blythe, you will testify in more detail tomorrow on other aspects of parents' groups and other issues, but at this time I would like to ask you a few short questions.

Would you state your name and where you are employed?

Mr. **Blythe**. My name is Larry Blythe. I work for the Bureau of Indian Affairs in Cherokee. I am the forest manager for the Bureau.

Mr. **Anderson**. Are you also a tribal council member?

Mr. **Blythe**. Yes; I'm on the tribal council.

Mr. **Anderson**. All right.

How many of your children were the victims of child molestation?

Mr. **Blythe**. Two.

Mr. **Anderson**. Are you aware that Mr. Price was the grade school teacher of one of the persons who molested your child?

Mr. **Blythe**. Yes; I am aware of that.

Mr. **Anderson**. All right. Thank you, Mr. Blythe. We will return to you on Wednesday with more detailed testimony, but I wanted to follow up that point with Ms. Shiek.

STATEMENT OF ELIZABETH SHIEK, PSYCHOLOGIST, SMOKEY MOUNTAIN MENTAL HEALTH CLINIC, BRYSON CITY, NC

Mr. **Anderson**. Ms. Shiek, would you please state your name for the record?

Ms. **Shiek**. Elizabeth Shiek.

Mr. **Anderson**. Where are you currently employed?

Ms. **Shiek**. I am currently employed with Smokey Mountain Counseling Center. I think it has been referred to as Smokey Mountain Mental Health.

Mr. **Anderson**. What type of services do you provide at the Smokey Mountain Mental Health Clinic?

Ms. **Shiek**. I'm a therapist, as well as a director of the center.

Mr. **Anderson**. Do you provide services for the persons on the Cherokee Reservation?

Ms. **Shiek**. Those that are authorized, yes.

Mr. **Anderson**. Are you aware that Mr. Price was a teacher at Cherokee Elementary School from 1971 until 1985?

Ms. **Shiek**. Yes.

Mr. **Anderson**. In your capacity as a psychologist have you encountered any children who have needed services as a result of the activities of Mr. Price?

Ms. **Shiek**. Yes.

Mr. **Anderson**. What is the nature of those services and how many children have required those types of services?

Ms. **Shiek**. I am currently aware of two children, both of whom were victims of molestation from Mr. Price and who have at this point been identified as perpetrators.

Mr. **Anderson**. Why is this? Why would a victim become a perpetrator at a later time?

Ms. **Shiek**. Well, we know that about 75 to 85 percent of male victims become perpetrators if they are not treated. A victim does not necessarily become a perpetrator; there are other factors involved, but it is certainly a major contributing factor as to whether an individual becomes a perpetrator.

Mr. **Anderson**. We were given testimony from an administrator at the school, that Mr. Price had conducted a contest whereby he rewarded one of his students with a bicycle. A week after the contest ended the student left the school. Are you aware of the name of the student?

Ms. **Shiek**. Yes.

Mr. **Anderson**. Is that person now in treatment?

Ms. **Shiek**. He was referred for treatment but he has dropped out of treatment because there had been no court order to maintain treatment.

Mr. **Anderson**. Is it possible that his recurrent behavior and need for treatment could be traced to Mr. Price's molestation activities?

Ms. **Shiek**. When I worked with this boy he directly stated to me that Mr. Price had molested him and that it certainly had an impact and that there was a lot of anger and rage within him. I think that was contributing to the fact that now he was molesting children.

Mr. **Anderson**. How many children per year from the Cherokee Reservation are referred to your organization for treatment services?

Ms. **Shiek**. I would say between 30 and 40.

Mr. **Anderson**. The Cherokee Elementary School currently has 600 children in the school, is that correct?

Ms. **Shiek**. I believe so.

Mr. **Anderson**. If you were to make an informed guess as to how many of those children have been sexually molested, what kind of range of figures would you come up with?

Ms. **Shiek**. Sexually molested, or the full range of exposure to sexual abuse?

Mr. **Anderson**. Both.

Ms. **Shiek**. I don't have any statistical facts other than through my patients, but I would estimate that it's up to 50 percent.

Mr. **Anderson**. How many of those children, of the 600, would you estimate have been sexually molested?

Ms. **Shiek**. I would say somewhere between 250 and possibly 300 kids.

Mr. **Anderson**. Do you think the services that are currently available in the Cherokee area are sufficient to meet the needs of the kids at the reservation?

Ms. **Shiek**. No; we are primarily the only resource available to them for even assisting in investigation, identification, and treatment.

Mr. **Anderson**. Is there a full-time therapist or services available for treatment on the reservation at this time?

Ms. **Shiek**. Not that I'm aware of, I don't believe that they even have a psychologist hired. I don't believe they have any mental health component within the health services.

Mr. ANDERSON. What does that mean for the mental health of the children who are on the reservation if those services are not available?

Ms. SHIEK. They must leave the reservation and receive them off the reservation, either via contract or by authorization through the hospital to our agency or possibly through private individuals.

Mr. ANDERSON. What happens if these children don't get any type of help?

Ms. SHIEK. Well, as they grow they develop a lot of difficulty in interpersonal relationships. Certainly their psychosexual development becomes interrupted. They have depression. As you have heard, they have difficulty in school. They have all kinds of anxiety separations, phobic-like behavior. Some children become very promiscuous. They will engage in inappropriate sexual behavior, or at least have extensive knowledge of this kind of thing. It can get as bad as suicidal ideations, homicidal ideations, and the outcome of the lack of treatment certainly means that they have the potential to be offenders.

Mr. ANDERSON. In fact, you are seeing offenders come from the reservation because of these types of problems?

Ms. SHIEK. Yes; we are now basically beginning to see the second generation, directly from the Paul Price situation. The multigenerational issue of abuse is a major one on the reservation.

Mr. ANDERSON. Mr. Chairman, I have no further questions of this panel.

Senator DECONCINI. Thank you, counsel.

Ms. Shiek, you have other cases besides these two that you are handling now?

Ms. SHIEK. Yes, sir.

Senator DECONCINI. Do you have other perpetrators identified besides Mr. Price?

Ms. SHIEK. Identified, but not in treatment.

Senator DECONCINI. Are there other teachers who are involved?

Ms. SHIEK. Not that I'm aware of, not teachers.

Senator DECONCINI. How do you get these cases? Do the parents bring them to you? Or does the school ever refer them to you?

Ms. SHIEK. Well, I can get them from any source. I get referrals from the schools, from the Department of Social Services, from the hospital. Those are the three primary resources, but the hospital actually pays for their service. So if we engage in service, we have to be authorized to provide that to them unless the parents say no, that they would rather pay for the services themselves.

Senator DECONCINI. So if a child is referred to you by the school, it is then paid by the hospital?

Ms. SHIEK. Sometimes.

Senator DECONCINI. Are you a subagency of the hospital or a part of the hospital?

Ms. SHIEK. No; we're an independent agency apart. We have a seven-county mental health service for the seven western counties in North Carolina.

Senator DECONCINI. Are you funded by the State, then?

Ms. SHIEK. Partially by the State and partially by our own endeavors.

Senator DeConcini. You mean solicitations and what have you that you use to try to raise money?

Ms. Shiek. First party and third party fees, right.

Senator DeConcini. Do you receive anything from the Bureau of Indian Affairs?

Ms. Shiek. We receive moneys for services that they agree to pay for. In other words, they notify us and let us know that they will pay for this session or *X* number of sessions and treatment.

Senator DeConcini. Does the BIA then actually refer the children to you?

Ms. Shiek. Well, the hospital does.

Senator DeConcini. It goes first to the hospital?

Ms. Shiek. It has to go through the hospital and be approved by a physician.

Senator DeConcini. I see.

Ms. Shiek. That's it.

Senator DeConcini. I'm just trying to understand. If it is referred from the school to the hospital and the hospital to you, then the BIA would pay for it?

Ms. Shiek. Well, I think the BIA and the Health Service are separate. It would come through Indian Health Service.

Senator DeConcini. Indian Health Service would pay for it?

Ms. Shiek. Right.

Senator DeConcini. Okay. So the BIA doesn't make any payments to your knowledge for such things?

Ms. Shiek. Not to my knowledge.

Senator DeConcini. How many cases do you handle here in the Cherokee area?

Ms. Shiek. Currently I am actively involved in—I'm going to guess here—I would say about 20 cases.

Senator DeConcini. Are those all children?

Ms. Shiek. Children and their families.

Senator DeConcini. Their families?

Ms. Shiek. Their families.

Senator DeConcini. Some of those are family incest cases as well?

Ms. Shiek. Yes; some of them are incestual.

Senator DeConcini. Not all of them are dealing with the schools?

Ms. Shiek. No.

Senator DeConcini. Do you have other schools involved here or students from other schools besides the Cherokee Elementary School?

Ms. Shiek. Public schools.

Senator DeConcini. Public schools?

Ms. Shiek. Yes.

Senator DeConcini. Ms. Haigler, in your testimony you said that when you complained, you complained to—was it Roy Lambert? Is that who you complained to?

Ms. Haigler. I went to see Mr. Wahnee to begin with.

Senator DeConcini. Mr. Wahnee? Who is Mr. Wahnee?

Ms. Haigler. The superintendent.

Senator DeConcini. OK, he is the superintendent you mentioned. When you complained to him about it, did he indicate that they had known it for a period of time?

Ms. HAIGLER. Just like they were waiting for somebody to come in and do something about it.

Senator DECONCINI. Did they say, "Well, we're so glad that you're here to complain because we need somebody to complain about it"?

Ms. HAIGLER. Yes; "We need this letter. Go home and write us a letter."

Senator DECONCINI. They said they had no other complaints?

Ms. HAIGLER. No; they didn't say that they had no other complaints. They had heard things before; that's why they were in the process of putting windows in those doors, to discourage it.

Senator DECONCINI. Did they give you any indication of how long they had known this was going on?

Ms. HAIGLER. No.

Senator DECONCINI. Ms. Tramper, the same with you? When you reported it to the principal—was this Mrs. Mary Widenhouse? Is that who you reported it to?

Ms. TRAMPER. No; I never reported it. I had no idea——

Senator DECONCINI. You didn't report it?

Ms. TRAMPER [continuing]. But the lady I was working with back in 1981 and 1982, Mary Widenhouse was the principal at that time.

Senator DECONCINI. You don't know if she knew about it, Mary Widenhouse? You didn't tell her?

Ms. TRAMPER. No; I didn't tell her.

Senator DECONCINI. So you don't know if she knew about it or not.

Ms. Haigler, back to you for just a moment. Who is Roy Lambert? He's the assistant principal, according to your letter.

Ms. HAIGLER. I believe that's what he was, something like upper hall principal or something.

Senator DECONCINI. Did you register your complaint with him?

Ms. HAIGLER. No; I went in when they wanted to fail John, and he was there. He just let me know then, that Paul Price was innocent, that he hadn't done anything, and that it was all John's doing if he was failing; that it was like running a race and some kids had to just start over.

Senator DECONCINI. You said in your letter that he thought that John had prefabricated a story.

Ms. HAIGLER. It was like all these kids——

Senator DECONCINI. Made these stories up?

Ms. HAIGLER. When Price pled guilty, and I was so upset with him, I went to the school and I told him that he had pled guilty, and I expected an apology. He said, "I don't owe you anything."

Senator DECONCINI. Is Mr. Lambert still there?

Ms. HAIGLER. Yes.

Senator DECONCINI. He is still the assistant principal in that school today?

Ms. TRAMPER. Yes; he is.

Ms. HAIGLER. He told me that Paul Price had pled guilty just to spare those little boys from having to get up and testify.

Senator DECONCINI. That's what he told you? Who is the principal still at that school today?

Ms. HAIGLER. Patsy Jones.

Senator DECONCINI. As far as you know, there is a new principal there now.

Ladies, thank you for your testimony. It is extremely helpful.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

I want to thank you parents for being here. I know this is a very unpleasant and traumatic experience for you. We appreciate very much your being here.

Ms. Tramper, do you know where Mr. Wahnee is now?

Ms. TRAMPER. He recently took a higher-paying position somewhere out west.

Senator MCCAIN. It's my understanding that it is on the Hopi Reservation as superintendent.

Ms. Shiek, if I understood your testimony correctly you said that you believed that about 50 percent of the children at the Cherokee school have been molested?

Ms. SHIEK. They've been exposed to some form of sexual abuse. It would not necessarily be molestation, but exposure to inappropriate sexual behavior which would constitute abuse. It doesn't have to be a hands-on abusive situation.

Senator MCCAIN. You testified that right now you are only counseling about 20 of those?

Ms. SHIEK. At this time, yes.

Senator MCCAIN. What will happen to the others?

Ms. SHIEK. That's a good question. I don't know how to answer that. I think that a lot of them obviously need treatment and don't have the resources available to them.

Senator MCCAIN. You also testified that if a child is untreated after being subjected to molestation, that 75 percent to 80 percent of those children will become pedophiles?

Ms. SHIEK. Well, what I said was that of the pedophiles that identified themselves, they said that they had been abused. They had been victims as well. So I'm not sure I would say that 75 percent of them would, but of the identified population of pedophiles, 75 to 80 percent of them had identified themselves as victims, that they had been victimized as children.

Senator MCCAIN. Mr. Blythe and Ms. Tramper, if this many children in the school have been exposed to some form of sexual abuse, how in the world could it have gone undetected for so long?

Do you have any ideas, Mr. Blythe?

Mr. BLYTHE. I would like to clarify the 50 percent in the school. I don't think that 50 percent happened within the school system. It's the reservation as a whole; I think that's the context.

You have to understand that people on the reservation know everybody. They are very protective of what happens to them and their families. They're not very outspoken about this type of behavior. I'm not sure if they experienced it as children or what the case may be. There is definitely a problem, either in getting the people to communicate or in wondering what's going to happen to them once they come forward, as far as services provided or whether they will see a conclusion to the problem.

Senator MCCAIN. Ms. Tramper, do you have anything to add to what Mr. Blythe said?

Ms. TRAMPER. No; but I think Larry's statement is correct about the 50 percent being within the reservation, not in the school system.

Senator McCAIN. I see. Okay.

Ms. Shiek, from your testimony you obviously have contact with public school children, non-reservation school children who have been subjected to child abuse as well. Would you say that the incidence on the Cherokee Reservation is significantly different from the incidence in the public schools?

Ms. SHIEK. Yes; I would say it's much higher. As a matter of fact, I was just thinking that better than two-thirds of the families and victims that I'm working with at this point are from Cherokee.

Senator McCAIN. So the non-Indian schools seem to be doing something rather dramatically different?

Ms. SHIEK. Well, I think they have better access and better resources for reporting and support for reporting. Therefore, there is more willingness to face the problem and do something about it.

I think the other contributing factor to why the incidence may be higher on the reservation, in conjunction with what Larry was saying, is that there is also a lot of geographical and social isolation on the reservation. There is not much influx from off the reservation into the reservation. The mountainous area contributes to this being an incestuous and interfamilial problem.

Senator McCAIN. Have you had any contact with BIA officials yourself?

Ms. SHIEK. I worked under contract through title I for 3 years on the reservation as a school psychologist.

Senator McCAIN. Do you have any impressions as to their accountability and attitude toward the problem?

Ms. SHIEK. I would concur with the other three people here, that bringing it to their attention didn't seem to do much good.

Senator McCAIN. Do you have any rationale why something as terrible as this would not be responded to?

Ms. SHIEK. Well, for one, it is extremely embarrassing to have to say that this is happening within our own system. I think the other, again, is not knowing what to do about the situation, where to go with it. I think the fear of the legal process at that point was pretty tremendous. Nothing had really transpired in the court system, so it was kind of like "Well, we've got the problem, but there's nothing we can really do about it."

I think the whole issue of being sued for slander—that was a rationale. I don't know that I can buy that, but that certainly was one rationale that was presented to me.

Senator McCAIN. Just one more time. In your view, the problem is significantly more difficult and greater in the Indian school than it is in the public school?

Ms. SHIEK. Yes; I would say under the circumstances, yes. The potential for it happening is greater.

Senator McCAIN. But with the proper communication, proper supervision, proper accountability on the part of the BIA officials, that would be cured? This is not just an endemic problem that would just necessarily happen because they are Indian children?

Ms. SHIEK. It's not just an Indian problem. Education, identification, prevention issues—people need to be trained to look for these.

Once this is available and a teacher is not threatened by reporting, and once there is a process in place as there is in most public school systems, I think it will help alleviate the fear of reporting.

Senator McCain. Is it an accurate statement to say that the BIA officials and the BIA superintendents in supervisory positions are not fulfilling their responsibilities in this area, in your opinion?

Ms. Shiek. In my opinion, I would say yes.

Senator McCain. Thank you.

Thank you, Mr. Chairman.

Senator DeConcini. Senator Daschle.

Senator Daschle. Thank you, Mr. Chairman.

I would like to follow up if I could on some of Senator McCain's questions relating to the experiences you've had, Ms. Shiek, in comparison with public schools.

You had indicated that in public schools there appear to be better resources, and certainly better reporting, as we try to determine more effective ways of detection. Could you describe more specifically how the public school reporting system is better?

Ms. Shiek. Basically by law, because if you do not report and you are known to have received such information about a child or even suspected it, you can be legally held liable for that. I don't believe that is the case on the reservation. So there is certainly pressure there to follow through on any kind of suspicion that any type of abuse to the child is occurring.

Senator Daschle. You say you don't believe there is any type of legal requirement on the reservation. Do you have any——

Senator DeConcini. If the Senator will yield, I think counsel can clarify that for us.

Can you clarify that?

Mr. Anderson. Yes; currently there is no Federal law on the reservation requiring reporting, in contrast to all 50 States that do have laws. So there is a gap on the reservation and on all Federal lands.

Senator Daschle. So what you're suggesting is that a Federal law or some kind of requirement on the reservation, a reporting requirement similar to that found in the States is a necessary minimum standard? Is that correct?

Ms. Shiek. It needs to be mandatory in order to stop the cycle.

Senator Daschle. Is there any other practice that would allow us a better ability to detect, other than the reporting?

Ms. Shiek. You mean, like educating teachers?

Senator Daschle. I'm just saying that if you could design a program that would allow us to more accurately and efficiently detect child molestation, is there something besides reporting that you would recommend?

Ms. Shiek. Yes; I would definitely recommend that there be, one, community awareness and public education so that we are focusing on a community-wide issue, that people become aware of what sexual abuse is. Two, I would recommend that law enforcement at all levels—the FBI, the local police, even attorneys—be trained in understanding the dynamics for better handling and understanding of the problem.

I would recommend that within the schools there be a K through 12 program so that the children learn that they can do something about this, that they can report, that they can learn what it is, that they can protect themselves from these situations. It needs to be an ongoing process. It's not something that can happen once; it needs to happen every year. Teachers, doctors, any care person for the child needs to understand this thing. It's a whole societal issue that needs to be brought to the awareness level.

In addition, there need to be resources for treatment——

Senator DASCHLE. I want to get to that in 1 minute. But before I do, do any of the members of the panel disagree with the recommendation made by Ms. Shiek?

Ms. HAIGLER. No.

Ms. TRAMPER. No.

Mr. BLYTHE. No.

Senator DASCHLE. You all agree, for the record.

With regard to prevention and treatment, is it simply a matter of lack of resources or does it go beyond that? The impression I have is that a big part of the problem is that we don't have the personnel and we don't have the money to fund the programs. Often times Congress is so willing to throw another program onto the problem, but if we would only look at the programs that exist, it's just a matter of funding rather than a lack of scope for the programs that exist already.

Which is it in your view? Is it a lack of adequate programs as you've outlined, in detection, for which there is clearly a lack on the reservation? Or is it just a lack of resources?

Ms. SHIEK. I think possibly it's a combination of those. You certainly need trained personnel within your resources.

Senator DASCHLE. How many people are there like you where you work now?

Ms. SHIEK. In my office? One, myself.

Senator DASCHLE. Just you?

Ms. SHIEK. Yes.

Senator DASCHLE. If you were going to do the job effectively, how many would you really need?

Ms. SHIEK. If we maintained services to the reservation?

Senator DASCHLE. Yes.

Ms. SHIEK. I would like to see at least two other professionals, qualified to treat not only the victims but the youthful offenders.

Senator DASCHLE. So we need three people?

Ms. SHIEK. At a minimum.

Senator DASCHLE. So in a sense, at least from your perspective, it's a matter of resources. But you say that beyond resources you would also provide programmatic change. What would that be?

Ms. SHIEK. That there would be a full continuum of services from the point, let's say, of pre-disclosure, where you begin to see some identification of behavioral issues out of the child, all the way through completion of treatment, which would incorporate the prevention issues, education—if I was to set it up, that is what I would wish to have.

I would also want to have a multidisciplinary team involved for investigation purposes, people trained to be able to interrogate and work with the children and their families at that point.

Senator DASCHLE. Do you currently have the opportunity to network with people such as yourself on other reservations?

Ms. SHIEK. No; just with Cherokee.

Senator DASCHLE. So there is very little networking opportunity now to share experiences and information that might be helpful with others?

Ms. SHIEK. That's true.

Senator DASCHLE. Are there any other recommendations with regard to prevention and treatment beside those just mentioned that members of the panel might have?

[No response.]

Senator DASCHLE. Is there any disagreement with the recommendations made?

[No response.]

Senator DASCHLE. Thank you, Mr. Chairman.

Senator DECONCINI. Thank you.

Mr. Blythe, you are a member of the tribal council. Are there any laws governing this under the tribal constitution or its legal processes?

Mr. BLYTHE. At the present time there is not. We rely on the Federal court system for enforcement.

Senator DECONCINI. Ms. Shiek, just to pursue slightly more what Senator Daschle went into on resources, you said you serve seven counties now?

Ms. SHIEK. No; I just serve one. Our agency serves seven counties.

Senator DECONCINI. I see. I was going to say that three people for seven counties, even small counties, seemed like very little.

You indicated that you thought a minimum of three people would be appropriate. That's just to take care of the caseload you now have?

Ms. SHIEK. Yes—well, no, it would go beyond that, to be able to be available for more——

Senator DECONCINI. For more referrals?

Ms. SHIEK. Right.

Senator DECONCINI. Have any parent support groups been started? We had testimony last week on the Hopi reservation in Arizona. Partly because of no resources, some parents had started a support group, attempting to counsel each other and get some professional help on occasions. Is that doable, and do you have any?

Ms. SHIEK. They have one on the reservation. Parents Against Child Abuse brings together parents of victims.

Beyond that, I am not aware of any other groups on the reservation, but it would certainly be a viable option.

Senator DECONCINI. There are several national organizations, as I'm sure you are aware, that come and help start such organizations.

I have no further questions. Does anyone else on the committee have any questions?

[No response.]

Senator DECONCINI. Ladies, and Mr. Blythe, thank you very much for your testimony this morning. I want to reiterate how important it is to us to have you here, and I realize that it is a trying time but I think it will serve us well in our deliberations and recommendations for changes. Thank you.

Our next panel will be Betty Brintnall, a teacher at Cherokee Elementary School, and Ollie Locust, a teacher's aide.

[Witnesses sworn.]

Senator DeConcini. Mr. Anderson.

Mr. Anderson. Good morning. We will begin with Ms. Locust.

STATEMENT OF OLLIE LOCUST, TEACHER'S AIDE, CHEROKEE ELEMENTARY SCHOOL, CHEROKEE, NC

Mr. Anderson. Ms. Locust, what is your name and where are you currently employed?

Ms. Locust. I am Ollie Locust and I am employed as a teacher's aide at the elementary school.

Mr. Anderson. What do you do as a teacher's aide at the Cherokee Elementary School?

Ms. Locust. I work in a Chapter I program, and I teach math and language.

Mr. Anderson. Now, Mr. Price was a teacher at the Cherokee Elementary School in 1983 or in 1984 when you were there, is that correct?

Ms. Locust. Yes.

Mr. Anderson. In 1983 or 1984 you were walking down the hallway at Cherokee Elementary School and you saw Mr. Price and a little boy in the hallway, is that correct?

Ms. Locust. Yes; I did.

Mr. Anderson. Could you please describe what you saw that day?

Ms. Locust. Well, I stepped out of my classroom and started down the hall toward the restroom. Just outside of the ladies' restroom I saw Mr. Price in the corner with a little boy, and he was massaging the boy's crotch area.

Mr. Anderson. When you came down the hallway and you saw that, did Mr. Price see you? What was his reaction?

Ms. Locust. Yes; he saw me. He started acting like he was praising the boy rather than what he was doing.

Mr. Anderson. Do you think that's what he was doing?

Ms. Locust. No.

I froze when I saw the incident. I stood there for a minute, trying to decide what to do. He just kind of spoke to the little boy like he had been greeting him or something. He was kind of leaning over, so then he straightened up. The little boy went on up the hall and Mr. Price went in the other direction. Then I just stepped into the bathroom.

Mr. Anderson. How did the little boy appear when you saw him? Did he appear frightened?

Ms. Locust. Well, yes, he was frightened. He wasn't struggling or anything. He was just standing there. I guess maybe he froze or something. I don't know.

Mr. Anderson. Then what did you decide to do after you saw this incident?

Ms. Locust. Well, I stood in the bathroom for a few minutes, trying to decide what to do. Then I decided I should go to the school nurse and tell her. So I went to the school nurse and——

Mr. Anderson. Who was the school nurse?

Ms. Locust. Frella Beck.

I kind of looked around. I was afraid of being overheard. I told her, "Could we step into your restroom? I have something to tell you." So she said, "Fine."

Normally we have several sick children in the nurse's office, so I just took her aside and I told her what I had seen. She told me then, "We should go and talk to Mary Widenhouse." She was our principal at that time.

Mr. Anderson. Did you in fact go and tell Mary Widenhouse the story?

Ms. Locust. Yes; we did.

Mr. Anderson. What did you tell Ms. Widenhouse?

Ms. Locust. I told her just what I had seen. She then told me—she said, "Well, you have done the right thing by coming and telling me, but now it is out of your hands."

Mr. Anderson. Did she believe your story at the time?

Ms. Locust. It didn't seem like she did. At first she asked me, "Do you really think you saw what you think you saw?" And I said, "Well, I know what I saw." There was no doubt in my mind what I had seen.

Mr. Anderson. Did Ms. Widenhouse ask you to file a written report about this incident?

Ms. Locust. No; she didn't.

Mr. Anderson. If she had, would you have filed a written report?

Ms. Locust. Yes; I would have.

Mr. Anderson. What did she say she would do about it?

Ms. Locust. She told me she would have Mr. Price watched. She said, "I don't want you to say anything to anyone about this. You could be hit with a slander suit if you do."

Mr. Anderson. Were you frightened that you would be subject to a suit if you told anyone else your story?

Ms. Locust. Well, that's the way she told me. She said it would be out of my hands and into hers, and she would have him watched, so I figured she would have someone watch him.

Mr. Anderson. In a sworn deposition to this committee the principal, Mary Widenhouse, testified that after your report she asked another teacher, Irene Parton, to watch Mr. Price on the playground to see if he was doing anything. Ms. Parton did not identify any suspicious activity by Mr. Price.

Did Ms. Parton ever contact you about your report?

Ms. Locust. No; she never did talk to me about it.

Mr. Anderson. After you had witnessed the incident, did the BIA ever contact you about it?

Ms. Locust. No.

Mr. Anderson. Did the FBI ever contact you about this incident?

Ms. Locust. No; they didn't talk to me until he was brought up on charges, when Mrs. Haigler brought them up.

Mr. Anderson. If the FBI or the BIA had investigated, do you believe the later incidents could have been prevented?

Ms. Locust. I believe if something had been done when I reported it, they could have spared a lot of children.

Mr. Anderson. All right. Thank you, Ms. Locust.

At this time I will turn to the next witness.

STATEMENT OF BETTY BRINTNALL, TEACHER, CHEROKEE ELEMENTARY SCHOOL, CHEROKEE, NC

Mr. Anderson. Would you please state your name for the record?

Ms. Brintnall. My name is Betty Brintnall.

Mr. Anderson. Where are you currently employed?

Ms. Brintnall. I'm a sixth grade teacher at the Cherokee Elementary School.

Mr. Anderson. How long have you been employed at the Cherokee Elementary School?

Ms. Brintnall. I have been employed at the school for 22½ years.

Mr. Anderson. In 1974 you were attending a summer school class in North Carolina for teachers, is that correct?

Ms. Brintnall. Yes.

Mr. Anderson. During that summer were you approached by a Dr. Justice concerning Mr. Price?

Ms. Brintnall. Yes; Dr. Justice was the teacher of the class I was taking. He was also the former principal of Camp Lab School, which is near Cherokee. He informed me and another teacher, Bonnie Cogdill, that he had dismissed Mr. Price from Camp Lab School for taking indecent liberties with children. He said that Mr. Price should never be around children again.

Mr. Anderson. Did you believe Dr. Justice's report at this time?

Ms. Brintnall. After talking to him several times, Bonnie and I decided that he was sincere and that he did have enough evidence against Mr. Price. We felt that we should go forth with the information that he had given us.

Mr. Anderson. Who did you go to with this information?

Ms. Brintnall. We felt we would get something done if we went to the chief. We knew a council member, Joe Bradley, who I think was also a school board member at that time. We discussed it confidentially with Joe. Joe, Bonnie, and I decided that we would take it to the Chief. Joe took it to the Chief. At that time the Chief was John Crowe.

Joe came back to us and he said, "We would like to talk to Dr. Justice." We had John Crowe and Joe Bradley meet us at Western Carolina University. We introduced them to Dr. Justice. We left them with Dr. Justice for the meeting. We were not part of the meeting.

Mr. Anderson. After that meeting were you ever contacted by the Bureau of Indian Affairs about that incident?

Ms. Brintnall. No; not about the information I had reported.

Mr. Anderson. Shortly after the meeting among Dr. Justice and the Chief and Joe Bradley there was a meeting of all the school teachers at Cherokee, is that correct?

Ms. Brintnall. Yes; that is correct.

Mr. Anderson. What happened at that meeting?

Ms. Brintnall. The meeting was held by the reservation principal at that time, Mr. Ray Cleveland, and a Mr. Maldonado who I believe was personnel director at that time. Mr. Cleveland gave the introduction to the meeting, and he said that rumors were being spread about a teacher there that were untrue, and if the people spreading the rumors did not stop, they would be sued for slander.

Then Mr. Maldonado got up with some kind of BIA manual and he read off all the penalties for slander. You would be dismissed, you would be imprisoned, and I don't remember all the others.

Mr. ANDERSON. Did you feel that this meeting was a direct result of your conversations concerning Mr. Price?

Ms. BRINTNALL. Yes; I did, because none of the other teachers even knew what the meeting was about. They were running up to each other saying, "Do you know what this is about?" They had no idea. Bonnie and I were the only two who had any idea what that was about.

Mr. ANDERSON. Were you afraid that you might be dismissed from your job if you further reported these allegations?

Ms. BRINTNALL. Bonnie and I felt that it was a very serious charge. With all the threats we really didn't know what might happen, but we couldn't understand why they were protecting Mr. Price and threatening us. We had a lot of mixed feelings about it.

Mr. ANDERSON. If the Bureau had followed up at that time on the information provided by Dr. Justice, do you believe the later molestation incidents could have been prevented?

Ms. BRINTNALL. Yes, Mr. Price could have been dismissed from the school when that was reported. I feel that Mr. Price would have voluntarily resigned if the administration had confronted him with the information that had been reported. He should have been throughly investigated when the first complaint was made. Mr. Price would have left in a minute.

Mr. ANDERSON. That was back in 1974?

Ms. BRINTNALL. Yes; he would have left. There would have been no problem.

Mr. ANDERSON. All right.

I have no further questions of this panel.

Senator DECONCINI. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

I just have one question for Ms. Brintnall. What role did Mr. Wahnee play in all of this as all these events unfolded?

Ms. BRINTNALL. Mr. Wahnee was not there in 1974.

Senator MCCAIN. I see. Did you know of any involvement he had later on?

Ms. BRINTNALL. No; I don't.

Senator MCCAIN. Thank you, Mr. Chairman.

Senator DECONCINI. Senator Daschle.

Senator DASCHLE. I just have one line of questioning.

The last panel certainly presented compelling evidence that the problems we're talking about this morning are virtually epidemic. They go beyond the experience of one individual.

Has it been the experience of either of you that situations like this have occurred, outside of those related directly to Mr. Price? Do you have any information leading to a conclusion that this is not an anomaly, that there are similar kinds of experiences happening right now or that have happened during your experience at the school?

Ms. BRINTNALL. The Paul Price case is the only one I know of.

Senator DASCHLE. Either of you?

Ms. Locust. I guess I was talking to a teacher that I work with now. She mentioned a case that had happened in our school system with another person, but this is more hearsay. But she talked as though he was confronted with it, and he had moved on and was in a different school system now.

Senator Daschle. Judging from what you—yes?

Ms. Brintnall. I'm sorry. I do recall now the incident she is mentioning. I had forgotten it.

Senator Daschle. But clearly, given the lack of programmatic ability to more successfully detect incidents such as these, it is unlikely that you would have the information in any case, is it not?

Ms. Brintnall. True.

Ms. Locust. That's true.

Ms. Brintnall. I did not have any information about the other incident. I heard about it afterwards.

Senator Daschle. Would you support the recommendations made by the earlier panel, that we've got to put a lot more emphasis on detection, virtually mandating that detection programs be made available on reservations as they are off reservations?

Ms. Brintnall. Yes.

Senator Daschle. Thank you, Mr. Chairman.

Senator DeConcini. Ms. Brintnall, after their 1974 meeting with Dr. Justice, did you receive any response from the Chief and Mr. Joe Bradley? Did they come back and talk to you about it or anything?

Ms. Brintnall. Yes. Joe came back to us.

Senator DeConcini. What did he say?

Ms. Brintnall. He said that Dr. Justice would be writing a letter to Robert Evans, who was the acting superintendent at that time, and that Robert Evans had told them that just as soon as he received the letter from Dr. Justice, that he would dismiss Paul Price.

Senator DeConcini. Do you know if Dr. Justice wrote such a letter?

Ms. Brintnall. No; I do not.

Senator DeConcini. Did you ever hear anything from Mr. Evans or anyone else on the subject matter?

Ms. Brintnall. No.

Senator DeConcini. Since 1974, did you have other information brought to your attention about Mr. Price?

Ms. Brintnall. There was continuous talk about him. Occasionally someone would say something about hearing that he had been reported and was being watched. I do remember being told by someone when Mrs. Locust reported the incident.

Senator DeConcini. When did you start at the school, Mrs. Locust?

Ms. Locust. I started in 1972.

Senator DeConcini. In 1972?

Ms. Locust. Yes.

Senator DeConcini. After the incident where you reported Mr. Price's actions to the nurse, did you continue to hear of those problems regarding Mr. Price? Did you see any other incidents or have any other facts been brought to your attention?

Ms. **Locust**. Yes; I saw—well, I heard from different people working there at the school. Certain ones would mention something that he was doing. This one teacher was watching him out there on the swings. He would sit in the swing with the children in his lap and swing with them on him.

I remember this one teacher saying, "Well, he's getting his jollies." It was just little things like this, little comments to each other. I don't think those teachers ever did go forward and say anything.

Senator **DeConcini**. Do you both agree that there was some attitude there of the teachers or the faculty that this was kind of acceptable behavior?

Ms. **Brintnall**. I think maybe most faculty members probably knew that someone had tried to get him removed from that school and had failed. I think that kept them from going forward.

Senator **DeConcini**. They were intimidated in that sense?

Ms. **Brintnall**. Yes; I think so.

Senator **DeConcini**. Yes; thank you. I have no further questions. Anyone else?

[No response.]

Senator **DeConcini**. Thank you for you testimony, ladies, very much.

We will now hear from Dr. Arthur Justice, Dean, School of Education, University of South Carolina at Spartanburg.

[Witness sworn.]

Senator **DeConcini**. Mr. Ballen.

Mr. **Ballen**. Thank you very much, Mr. Chairman.

STATEMENT OF ARTHUR JUSTICE, DEAN, SCHOOL OF EDUCATION, UNIVERSITY OF SOUTH CAROLINA, SPARTANBURG, SC

Mr. **Ballen**. Dr. Justice, could you state your full name for the record?

Dr. **Justice**. Dr. Arthur Justice.

Mr. **Ballen**. Sir, what is your current position?

Dr. **Justice**. I am currently Dean of the School of Teacher Education of the University of South Carolina at Spartanburg, SC.

Mr. **Ballen**. How long have you been Dean of the School of Education?

Dr. **Justice**. I'm in my 12th year.

Mr. **Ballen**. Prior to that, Dr. Justice, what positions did you hold?

Dr. **Justice**. Immediately prior to that I was Director of the Midsouth Teacher Corps Network, which covered six States. The office was at George Peabody College. Immediately prior to that I was the Director of the Southeast Teacher Corps Network, which covered 11 southeastern States, with offices at Western Carolina University.

Mr. **Ballen**. Sir, at some point in time were you Director of the Camp Lab School at Western Carolina University in North Carolina?

Dr. **Justice**. Yes; from 1970 to 1972 I was Principal Director of that Lab School.

Mr. **Ballen**. Sir, you have a doctorate and masters in education from Duke University? Is that true?

Dr. **Justice**. That's correct.

Mr. **Ballen**. You also have published numerous articles, both in the field of education in general and specifically in the field of child abuse, is that true?

Dr. **Justice**. That's correct.

Mr. **Ballen**. Sir, you testified that you were Director and Principal of the Camp Lab School. Could you describe briefly for the members of the committee the nature of that school?

Dr. **Justice**. Yes; at a time when we had teacher preparation institutions—that was their sole purpose—most of those institutions had an on-campus laboratory school in which children of faculty and staff, and also surrounding public areas, could come to that school. Supposedly those schools had better programs, better qualified teachers, more innovative ideas.

The Camp Lab School at Western Carolina University was one of those schools.

Mr. **Ballen**. Thank you, Dr. Justice.

Who was Paul Price?

Dr. **Justice**. Paul Price was a seventh grade teacher on the faculty of the Camp Lab School when I went there in 1970 as Principal Director.

Mr. **Ballen**. How long had Mr. Price been a teacher at the Camp Lab School when you arrived, to the best of your knowledge?

Dr. **Justice**. I think he was hired in 1968. I'm not positive of that.

Mr. **Ballen**. Now, sir, what occurred in April or May 1971 in reference to Paul Price?

Dr. **Justice**. My son was a seventh grader, and Mr. Price taught all seventh graders at that time. My son requested permission from my wife and me to accompany Mr. Price and some other boys on a weekend camping trip. We gave our permission; we had no reason not to at that time.

When he returned from that camping trip he immediately told me that something had happened that I should be aware of. In talking with him, he said that Mr. Price had done some things to some of the boys. He was not one of the boys that anything had happened to, but he did give me the names of the boys who were on that trip, and immediately—the next day—I began calling the boys into my office to talk with them about what had happened on that trip.

Mr. **Ballen**. What did the boys tell you?

Dr. **Justice**. The boys confirmed that there had been some sexual molestation—not all of the boys, but a large percentage of them—individually, with Mr. Price.

Mr. **Ballen**. What was the nature of that molestation?

Dr. **Justice**. Most of it was fondling, both inside and outside of the clothing. There was at least one specific case of oral sex being performed.

Mr. **Ballen**. Sir, what did you do as a result of this investigation of the boys?

Dr. **Justice**. After I had talked with all of the boys and was satisfied to myself that this actually had occurred, I called Mr. Price in and I confronted him with the evidence that the boys had given to me.

Mr. BALLEN. What happened at that point in time?

Dr. JUSTICE. Mr. Price denied it. He said that they were making up stories about him, that he did not do something like that.

Mr. BALLEN. What did you do? Did you challenge Price?

Dr. JUSTICE. I challenged him. I asked him if he would like to have me bring all the boys in to repeat their stories to me in front of him.

Mr. BALLEN. How did he respond?

Dr. JUSTICE. He said that he did not need that, that they were correct.

Mr. BALLEN. Sir, did you take any steps at that point in time to dismiss Paul Price?

Dr. JUSTICE. I immediately informed him that I would dismiss him. I contacted the County Superintendent with the facts that I had and told him I wanted to dismiss him at that time. The County Superintendent said that he would not dismiss him at that time but wait until the end of the school year, which was roughly 4 weeks away, and would simply not rehire him.

Mr. BALLEN. Did you inform Mr. Price that you would not give him a recommendation of any sort?

Dr. JUSTICE. I did.

Mr. BALLEN. Sir, that August in 1971, after Price was dismissed by you, what did you learn about him?

Dr. JUSTICE. I was very surprised to find out in August that Mr. Price had been hired to teach in the Cherokee Elementary School. I was surprised because Western Carolina University is not very far from the Cherokee Reservation and there is a lot of interplay back and forth between the university and the reservation.

So I immediately wrote a letter to the principal of the Cherokee Elementary School, that Mr. Price had been dismissed and the reason why he was dismissed.

Mr. BALLEN. Prior to hearing that Mr. Price had been hired by the Cherokee Elementary School, had anyone ever called you from Cherokee Elementary School to check on Price's references?

Dr. JUSTICE. No.

Mr. BALLEN. To the best of your knowledge, had anyone called any other member or administrator at the Camp Lab School to check on Mr. Price?

Dr. JUSTICE. To the best of my knowledge, no.

Mr. BALLEN. Who did you send the August, 1971 letter to?

Dr. JUSTICE. The principal at that time was a Mr. DuPree.

Mr. BALLEN. What did the letter say, sir?

Dr. JUSTICE. In effect the letter said that I had dismissed Mr. Price from his position at the Camp Lab School and the reason why, that he had been sexually involved with young boys.

Mr. BALLEN. What happened as a result of the letter?

Dr. JUSTICE. I received no information from Cherokee Elementary School.

Mr. BALLEN. Now, sir, in the summer of 1974 did you discuss Paul Price again?

Dr. JUSTICE. Yes.

Mr. BALLEN. What were the circumstances this time?

Dr. **Justice**. Two of the teachers from the Cherokee Elementary School were in a graduate class that I was teaching at that time. That course dealt with research methodologies. After class one day there was a discussion between those two teachers and me relative to Mr. Price. During that discussion I informed them that I had dismissed him.

Mr. **Ballen**. Was one of those teachers Betty Brintnall?

Dr. **Justice**. Yes.

Mr. **Ballen**. What occurred as a result of those discussions?

Dr. **Justice**. A subsequent meeting was held with Mr. John Crowe, who was Chief of the Cherokee Tribe at that time, and Mr. Joe Bradley, who was a member of the tribal council.

Mr. **Ballen**. Did you inform them during that meeting of the reason that you had dismissed Paul Price?

Dr. **Justice**. Yes; I did.

Mr. **Ballen**. What did they ask you to do?

Dr. **Justice**. They asked if I would write a letter to the superintendent of the Bureau of Indian Affairs at Cherokee, stating what I had said to them. I agreed to write that letter.

Mr. **Ballen**. Did you write that letter, sir?

Dr. **Justice**. Yes; I did.

Mr. **Ballen**. Now, Mr. Bradley also testified to the committee in a sworn deposition that he subsequently met with the BIA superintendent at the time who was acting, Robert Evans, and relayed to Evans his conversation with you about Paul Price. Evans assured Mr. Bradley of the tribal council that Price would be dealt with after he had communicated with you.

Now, Dr. Justice, after you wrote the letter did the BIA superintendent ever contact you regarding Paul Price?

Dr. **Justice**. I had no contact.

Mr. **Ballen**. Sir, was there anything else you could do to get Price removed from the Cherokee Elementary School?

Dr. **Justice**. No, sir; there was not. I had written two letters. North Carolina had just passed their child abuse reporting law, but as an individual citizen or university faculty member I had no recourse to bring any kind of criminal charges against this man.

I had written letters. I had done everything I could.

Mr. **Ballen**. Now, Dr. Justice, you talked about the State of North Carolina passing its reporting laws, but there was no Federal reporting law that covered the BIA school on the Cherokee reservation in North Carolina at the time, was there?

Dr. **Justice**. No; there was not.

Mr. **Ballen**. Now, Dean Justice, you are a noted educator and expert in your own right in public education and child abuse. Isn't it true that all 50 States have laws that require reporting of child abuse?

Dr. **Justice**. That's correct.

Mr. **Ballen**. What occurs if an education professional or teacher does not report child abuse?

Dr. **Justice**. Every one of those laws contains a provision of what would happen if a person who suspects child abuse does not report it. It may be a fine. It may be imprisonment. It may be both. It may be a misdemeanor charge.

Mr. BALLEN. Dean Justice, does the Federal Government have such a law to cover Federal Indian schools?

Dr. JUSTICE. No; it does not.

Mr. BALLEN. In 1974 Congress required States to adopt mandatory reporting laws as a condition of all Federal aid but did not require such reporting in Federal Indian schools. Is that correct?

Dr. JUSTICE. That's correct.

Mr. BALLEN. Do you know the reason why?

Dr. JUSTICE. No; I do not.

Mr. BALLEN. Sir, what do the State mandatory reporting laws require, in general?

Dr. JUSTICE. It varies from State to State, but basically anyone in a reporting situation—teachers, the medical profession, ministers, counselors—who even suspects that there is any kind of abuse are required by the law to report it to the agency that the law states should receive it, in most cases the social welfare agency. That agency is charged by most of the laws with investigating that charge within 24 hours.

Mr. BALLEN. Dean Justice, if there had been such Federal laws in place during the 14 years that Price was at the Cherokee Elementary School, those who failed to report and investigate Price at the BIA would have been subject to criminal prosecution. Is that true?

Dr. JUSTICE. Absolutely.

Mr. BALLEN. Dean Justice, Paul Price is due to be released from prison soon. Is there any law that could prevent him from teaching again on another reservation in a different part of the country from North Carolina?

Dr. JUSTICE. Not to my knowledge.

Mr. BALLEN. Recently the BIA has issued internal guidelines and policies designed to require reporting, but there are no Federal laws in place. Are those kinds of policies and guidelines enough?

Dr. JUSTICE. I don't think so. I don't deal with Federal schools that much. I do believe there is a fingerprint check law which could put some stop to it, but I think there needs to be a Federal statute that regulates Federal schools the same as we have for the 50 States.

Mr. BALLEN. Thank you very much, Dean Justice.

Mr. Chairman, that concludes my questioning.

Senator DECONCINI. Dean Justice, what happens in your State to the person who reports the incident? Are they protected by anonymity of the report? What is their liability?

Dr. JUSTICE. They are protected.

Senator DECONCINI. They are protected. So their name is not part of the record for any purposes?

Dr. JUSTICE. Their name is not brought in at all unless that person indicates that they wish to go forward to testify.

Senator DECONCINI. To testify and be part of a criminal complaint?

Dr. JUSTICE. Yes.

Senator DECONCINI. What is the experience in North Carolina? Do you know of the use of that law?

Dr. JUSTICE. In North Carolina or South Carolina?

Senator DECONCINI. In your State. Do you know what has happened with that law since it has been in effect in your State of South Carolina?

Dr. JUSTICE. There has been approximately a 20 percent increase in the number of reported cases and cases that have gone on into litigation. There are a number of cases, I'm sure, that are reported that are handled on a treatment basis that do not get into the court system; I would not have the figures on that. But roughly, 20 percent——

Senator DECONCINI. Roughly 20 percent more prosecutions or complaints that are filed in the criminal courts for some disposition?

Dr. JUSTICE. Yes.

Senator DECONCINI. Thank you. I have no further questions.

Senator McCain.

Senator MCCAIN. Dr. Justice, in the case of Dr. Price, as previously stated in response to questions by counsel, if Mr. Price were released from prison you know of no preventive measures that would be in place to keep him from teaching in another reservation school?

Dr. JUSTICE. Not on a reservation school, no, sir.

Senator MCCAIN. Why is that?

Dr. JUSTICE. Mr. Price could leave where he is now and go to a western reservation school and apply. Unless the FBI check indicated that he had been criminally prosecuted and incarcerated, there would be no check that would indicate that he had been in any difficulty.

Senator MCCAIN. In other words, if he submitted a resume that didn't include a prior criminal conviction, there would be no further responsibility on the part of the BIA to follow up?

Dr. JUSTICE. There would be nothing that would indicate that, no.

Senator MCCAIN. Again, in response to previous questions, you think that recent policies implemented by the BIA are not sufficient and that legislative action is required? Is that correct, Dr. Justice?

Dr. JUSTICE. Senator, policies can be put on a shelf and forgotten. Policies can be implemented only to the degree that the supervisor wants to implement them. If they want to overlook them they may do so. Legislation is a different matter, and I strongly believe that there needs to be some Federal legislation.

Senator MCCAIN. Well, Dr. Justice, I can only speak for this Member but I think I reflect the view of the committee in that we would certainly be very much inclined to enact legislation. We would appreciate your specific recommendations as to what that legislation should include.

Dr. JUSTICE. I think that legislation should follow the model that we have in most of our 50 States that requires reporting, that establishes to whom that report is to be given, and requires the person receiving the report to forward it on to the agency that is responsible for investigation.

I think that legislation should also carry some penalties if you do not report it.

I strongly believe that this Nation needs a fingerprint law. I think it is rather ridiculous that someone in Texas can steal an automobile and be convicted of that; can then come to South Carolina and steal another automobile and be convicted; and simply by looking at fingerprints, the previous record can be determined. But someone can go into a Texas school and teach and molest a child, and then can go to South Carolina and do the very same thing, and there is no fingerprint law that will identify that person.

Senator, I well know right now that the American Federation of Teachers, the National Education Association, and ACLU would have fits if they heard me say that, but I believe that very strongly. If we had a fingerprint law that could track molesters from one State to another—and I grant you that you would have to have a conviction for that—we would eliminate a lot of the abuse that is happening to children today.

Senator McCAIN. Thank you.

Dr. Justice, given your extensive knowledge of education and institutions throughout the country, although I know you are not directly involved in BIA schools, would you say from your knowledge that the problem of child molestation is more serious in BIA schools than in public schools?

Dr. JUSTICE. I would tend to agree with what members of previous panels today have had to say. I think Mr. Blythe indicated the closeness of the family on the reservation, particulary on the Cherokee reservation where you have geographic isolation. I think it certainly does contribute to molestation.

I cannot agree that all of the molestation is taking place in the school.

Senator McCAIN. I think the other witnesses stated that as well.

Dr. JUSTICE. I think there is a certain amount taking place, but obviously we have a problem that needs a solution.

Senator McCAIN. We need to get Dr. Shiek some more help, would you say?

Dr. JUSTICE. I would certainly say that. She is doing a magnificent job, virtually by herself.

Senator McCAIN. But you also would agree with her that the problem is more serious in the BIA schools than it is in non-Indian schools?

Dr. JUSTICE. Yes.

Senator, if you don't have a reporting law, the person who is doing the abusing relieves one of their worries right off the bat.

Senator McCAIN. I almost hesitate to ask this question, but can you imagine a scenario in a public school that was described by Mrs. Brintnall, basically threatening people if they did report such activities? At least that's one of the major points I got out of her testimony.

Dr. JUSTICE. Today? No, sir.

Senator McCAIN. Thank you very much, Mr. Chairman.

Thank you, Dr. Justice, for very fine testimony.

Senator DECONCINI. Senator Daschle.

Senator DASCHLE. No questions, Mr. Chairman.

Senator DECONCINI. It is going to be interesting to do some research, which Mr. Ballen is going to be directed to do shortly, to find out what the historic reason was that Congress excluded the

Federal laws from the insistence on reporting, as they insisted that all States do it. I want to know that for historical reasons, but I also hope that we can change that.

Dr. JUSTICE. Thank you, sir.

Senator DECONCINI. I appreciate your time immensely on this effort.

We will now hear from Tony Marceca, Special Agent, Criminal Investigative Division, U.S. Army. Please identify yourself for the record and explain what you are going to do.

STATEMENT OF TONY MARCECA, SPECIAL AGENT, CRIMINAL INVESTIGATIVE DIVISION, U.S. ARMY

Mr. MARCECA. I am Special Agent Marceca, and I am assigned to the special committee as an investigator.

Senator DECONCINI. Mr. Anderson, go ahead.

Mr. ANDERSON. Mr. Marceca, you participated in a videotaped deposition of Mr. Price, is that correct?

Mr. MARCECA. That's correct.

Mr. ANDERSON. Who was present at that deposition?

Mr. MARCECA. Mr. Ballen, Mr. Anderson, and myself.

Mr. ANDERSON. And what date was that videotape deposition taken?

Mr. MARCECA. That was February 13, 1989.

Mr. ANDERSON. What was the location of that deposition?

Mr. MARCECA. The videotape was done at Butner Federal Correctional Institution in Butner, NC.

Mr. ANDERSON. Why was that deposition taken in prison rather than through live testimony?

Mr. MARCECA. Paul Price rejected coming to Washington because he said he was in fear of his life if he had to stay overnight in the DC jails. He also was fearful of retaliation if he left the institution.

Mr. ANDERSON. All right. I have no further questions. You may begin the videotape deposition of Mr. Price.

[Videotape deposition shown.]

[Transcript of videotape deposition appears in the appendix.]

Senator DECONCINI. Thank you, Mr. Marceca, for your explanation in conducting this and putting it together.

The committee will stand in recess until 2 p.m. this afternoon, when we will proceed with the hearing on this subject matter.

[Whereupon, at 11:55 a.m., the hearing was recessed, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION—2 P.M.

Senator DECONCINI. The Special Committee on Investigations will come to order.

This afternoon we have several panels. The first one will be with David Small, Supervisory Special Agent, Phoenix, AZ.

Mr. Small, welcome. We are glad to have you here.

We will also hear from Mr. James Perry, Supervisory Senior Resident Agent from Rapid City, MN, division of the FBI.

Thank you, Mr. Perry, for being with us.

I will yield to Ms. Soller for the questioning.

[Witnesses sworn.]

STATEMENT OF DAVID LINCOLN SMALL, SUPERVISORY SPECIAL AGENT, PHOENIX DIVISION, FEDERAL BUREAU OF INVESTIGATION AND JAMES G. PERRY, SUPERVISORY SENIOR RESIDENT AGENT, RAPID CITY RESIDENT AGENCY, MINNEAPOLIS DIVISION, FEDERAL BUREAU OF INVESTIGATION

Ms. SOLLER. Mr. Small, please give us your background.

Mr. SMALL. I have been employed by the FBI for approximately 20 years. I have been assigned to the Phoenix Division of the FBI since September 1970. I have spent several years in the Flagstaff Resident Agency and the Prescott Resident Agency of the FBI.

Ms. SOLLER. What is your current position?

Mr. SMALL. I am titled "Supervisory Special Agent" with the FBI.

Ms. SOLLER. In which division?

Mr. SMALL. Phoenix Division.

Ms. SOLLER. Mr. Perry, what is your background?

Mr. PERRY. I was a pilot for 6 years in the Air Force and entered the FBI in 1971. I was assigned to Pittsburgh, Philadelphia, Las Vegas, FBI Headquarters, and now Minneapolis. I have about 8 years with the Bureau.

Ms. SOLLER. What is your current position?

Mr. PERRY. I am Supervisory Senior Resident Agent for the State of South Dakota.

Ms. SOLLER. As I understand it, both of you have statements that you have brought with you today?

Mr. SMALL. Yes; I have a prepared statement and would like to submit it for the record.

Ms. SOLLER. Mr. Perry.

Mr. PERRY. Yes; I have prepared a statement and would like to submit it for the record.

Senator DECONCINI. Without objection, both statements will appear in the record.

[Prepared statements of Mr. Small and Mr. Perry appear in appendix.]

Ms. SOLLER. Mr. Small, I'd like to start with you.

What are the jurisdictional guidelines that the U.S. attorney's office has set for the FBI in Arizona?

Mr. SMALL. In Arizona, jurisdiction on the reservation is divided under several different entities: the tribal government has tribal police; the BIA has jurisdiction; the FBI has jurisdiction; and in cases involving non-Indians, the county and State police have jurisdiction.

The U.S. attorney in 1982 set out guidelines distinguishing and assigning those separate jurisdictions and the laws that they were to investigate. Generally, the Indian police, under these guidelines which were set out in 1982, handle all the liquor violations, the larcenies, and the assaults. The BIA, at that time, did the sex crimes, rapes, sodomies, incests, larcenies, burglaries, unarmed robberies, and thefts. The FBI did the murders, manslaughters, assaults, arson cases, bank robberies, kidnappings, et cetera.

With the advent of public law 99-303, signed February 15, 1986, these guidelines were amended wherein the FBI would address cases involving adults alleged to have molested children. These cases are worked jointly with the BIA.

Ms. SOLLER. Does that cover both cases that happen in institutions, such as schools, and those that happen in the community?

Mr. SMALL. Yes; it does.

Ms. SOLLER. Mr. Perry, what is the relationship of the jurisdictional lines that have been established in your area?

Mr. PERRY. In the three-State area of North Dakota, South Dakota, and Minnesota, the FBI has made violent crimes, to include the sexual abuse of children, and narcotics trafficking as the two major priorities on the Indian reservations.

In North Dakota the U.S. attorney's office, BIA, tribal police, and the FBI decide on a case-by-case basis who handles a particular matter.

In Minnesota and South Dakota we have prosecutive guidelines which basically set out—and it is mutually agreeable—that the FBI handle all violent crimes, to include: murders, manslaughters, rapes, various assaults resulting in serious bodily injury, and child sexual abuse.

Ms. SOLLER. Mr. Small, what is the FBI's relationship with BIA law enforcement and tribal police in Arizona?

Mr. SMALL. I believe we have an excellent relationship with them.

Ms. SOLLER. Does your work, or the work of the agents in Arizona, require the FBI to work with the tribal police and BIA on individual cases?

Mr. SMALL. Yes, usually the scene of the crimes is such a great distance away from the courts, and sometimes from where the agents are stationed, that the tribal police are usually the first ones on the scene of the more serious crimes, such as the murders, which they have to secure until agents can arrive to conduct the investigations.

Ms. SOLLER. Who presents the cases to the U.S. attorney's office for prosecution?

Mr. SMALL. It would really depend on which violation we're talking about. Usually at the outset a determination is made by the FBI, the BIA, and the tribal police as to who will be the lead agency to conduct the investigation depending upon the prosecutive guidelines set out by the U.S. attorney.

Once that determination is made—for example, if the FBI decides to be the lead agency or it is determined they are the ones that should conduct the investigation, then the FBI agent will present the case to the U.S. attorney. If it is decided at the inception of the case that the BIA officer is the individual that has the jurisdiction, as set out under the guidelines, then he would carry the case through. The same for the tribal police.

Ms. SOLLER. Mr. Perry, how does it work in the three-State area with which you are familiar?

Mr. PERRY. Generally we get along very well and cooperate fully; however, there are a couple of problems.

It seems BIA and tribal police are transient in nature. They are hired, they move on to another reservation, or they are fired or they are dismissed. Once we get an officer trained and working well together, then he seems to move on. So it is a transient nature of law enforcement on the reservations.

Also, on several of the reservations BIA will be investigating 1 month; 6 months from now the tribe will take over law enforcement; and then 1 year from now BIA will be back in. So it is back and forth between tribal and BIA Law Enforcement.

If we had some continuity on the reservations with whoever is going to be in charge of law enforcement it would help a great deal.

But generally speaking we get along very well with BIA and tribal police.

Ms. SOLLER. Mr. Perry, what kind of training does the FBI do for BIA law enforcement and tribal police?

Mr. PERRY. Upon request for specific training we always try to accommodate. In the sexual abuse area we have had a couple of seminars and workshops for BIA and tribal officers that have worked with us. Our agents need training just as well as BIA and tribal, so whenever they request of us we try to accommodate.

Ms. SOLLER. And Mr. Small, what about in Arizona?

Mr. SMALL. It is the same in our jurisdiction, also. The U.S. attorney, in the sexual crimes area, has sponsored 1- and 2-day seminars in Phoenix where not only FBI agents were required to go, but tribal officers and BIA officers were brought in, specifically to address the new jurisdiction.

Ms. SOLLER. Mr. Perry, I understand that there is an unusual approach that has been taken by the FBI in South Dakota in the handling of child sexual abuse cases that you mentioned in your statement. Could you elaborate a little bit on that for the record?

Mr. PERRY. We have a high volume of individual cases in South Dakota. We're not talking about serial or pedophile type crimes; it is individual family cases. To combat this we have formed a sexual abuse team in the Pierre Resident Agency. Besides that team, on most of our cases we have an informal team that operates and investigates most of the cases.

The team approach was developed by Special Agent John Ellis, an FBI agent. Basically it involves an FBI agent, a social worker, a clinical psychologist, the U.S. attorney witness-victim coordinator, and an assistant U.S. attorney.

When a case is reported and we open the case, the team is assembled and works together from the inception until prosecution and afterwards.

Ms. SOLLER. In this team there are social services. Is that BIA social services that's involved?

Mr. PERRY. South Dakota social services.

Ms. SOLLER. The State social Service?

Mr. PERRY. That's correct.

Ms. SOLLER. Mr. Small, what's the relationship in Arizona with the FBI investigative forces with social services and with IHS?

Mr. SMALL. In Arizona we have 20 reservations. We have around 244,000 Indians on the census rolls. The FBI's relationship to BIA social services—I'm not sure that there is one. I think it is tribal social services generally, and there is a wide range of how our relationship is with those people. On occasion we will have social service investigators that will report crimes to us which enable us to conduct investigations. Other times we have some difficulty in identifying crimes.

Ms. SOLLER. What about with the Indian Health Service [IHS]?

Mr. SMALL. The IHS, to my knowledge, does not really have an after care type of treatment. Many times the victims are brought to IHS for examination, and we also get a wide range of reaction there. Sometimes we will find doctors that are most eager to testify and to report cases of sexual molestation, and other times we will find, less often, doctors who are not excited or anxious to involve themselves in the trial proceedings because it takes away from their medical practice.

Ms. SOLLER. Have you had experience in Arizona with IHS doctors in fact not doing the examinations in some cases?

Mr. SMALL. No, they will do the examinations. We have had some experience where the tribe and the investigators felt that there would be a greater forensic ability if the victims were examined by another entity. We have some ongoing cases now where the victims were flown out of the State to a specialized children's hospital in California for examination and they were not sent to the IHS hospital because there was sort of a mutual agreement that a better examination could be done by a private institution.

Ms. SOLLER. Mr. Perry, how is the reporting policy or the reporting procedures that are currently in place actually working in your experience?

Mr. PERRY. In South Dakota they are working very well. The State agency, the South Dakota social services, becomes involved almost immediately in all of our cases, and in most cases they telephone us when they have a case, and also then submit a referral form.

In North Dakota there is not a State social service agency. BIA social services reports most of the cases we open.

We do have problems with reporting, particularly in North Dakota. I don't believe the BIA is staffed that well. They do the best with what they have, but I don't think they have the training or the manpower to report properly and to identify child sexual abuse cases.

Ms. SOLLER. Do you think it would be a benefit if there was a federally-mandated reporting policy in place on Indian Country?

Mr. PERRY. Definitely.

Ms. SOLLER. Mr. Small, what has your experience been?

Mr. SMALL. Our experience is that the reporting is chaotic. A lot of violations have been reported to us. On occasion we will find a case that has been reported to another agency that has lain dormant for several years and has not been reported to us, which makes us wonder if there are other such cases out there that we are missing.

Senator MCCAIN. Can you give us an example of what you just said?

Mr. SMALL. There is a pending case which I cannot elaborate on a whole lot, but there is an instance where there was a quite severe case that had been reported to another agency. It had been filed away in this agency for over 2 years, and through an independent investigation we came upon it, found it, immediately initiated another investigation, and have——

Senator McCain. Are you at liberty to say what agency that was?

Mr. Small. Because it is a pending investigation—and it is pending trial—if I could do that at a later time perhaps it would be better.

Senator McCain. Thank you.

Mr. Small do you believe that a Federal mandatory reporting policy would be of benefit?

Mr. Small. Yes; one of the major problems of investigators conducting investigations on reservations is finding the crime. That is a major problem.

Ms. Soller. Mr. Small, in your prepared statement you referred to a survey of cases that had been conducted in Arizona; is that right?

Mr. Small. Yes.

Ms. Soller. Could you elaborate a little bit on that survey and what the findings were?

Mr. Small. Yes, after Public Law 99-303 was signed into law it was attached to the Assimilated Crimes Act, giving the FBI the jurisdiction to investigate these crimes; in the Phoenix Division we undertook a crime survey where agents were sent out to interview public health service hospital employees, social service employees, tribal officials, and BIA officials in an attempt to identify the scope of the problem inasmuch as we had not done this previously.

The results of the survey were basically there is no accurate reporting system. There is no identifiable central repository of records that one can go to to determine how many cases have been reported or how many have not been reported. Some agencies do not maintain cumulative records.

We did find approximately 140 sexual molestation cases reported on the reservations in Arizona for fiscal year 1986. So we took that information and then met with the U.S. attorney to develop the prosecutive guidelines which were based on available manpower and to discuss how we were going to interface with our other law enforcement agencies.

Ms. Soller. What was the breakdown on those cases as far as which ones came from the community and which ones came from institutions?

Mr. Small. We did not break those cases down. We just took those as a reported sexual molestation case and added them up.

Ms. Soller. Now, in your statement you indicate that there were a substantial number of these cases that were still pending; is that right?

Mr. Small. During the period August 1, 1986 until February 17, 1989, we conducted 96 sexual molestation investigations.

There were 24 other sexual molestation cases that were referred to us which we immediately referred to the BIA or the tribal police for investigation. The FBI did not do any investigation on those at all, except to notify the U.S. attorney's office and notify the head of the referral agency that we were not conducting an investigation and they should take the ball and run with it.

Of the 96 cases that we did investigate, 61 are in closed status and 35 are still pending; 11 were—or "are," depending on whether they are closed or not—allegations against BIA employees, 5 were against public school employees, 6 were against tribal employees, 36 against family members, 23 against non-family members; 16 were unfounded; and I have some other breakdowns.

Ms. SOLLER. In your statement you also mentioned four cases that have been closed, and I'd like to discuss some of the details of those cases for a moment.

What was the first case, chronologically, which your office handled involving a BIA school teacher?

Mr. SMALL. That was the John Warren Boone case. It was a BIA school teacher. The first——

Ms. SOLLER. Was there a case before that?

Mr. SMALL. Yes; the first case that we handled was a public school teacher, Conrad Marion Flint. Essentially the way this case was started was that the State police and a BIA officer were working a case together and came across some obscene photographs.

They worked the case up, and as they were investigating it they found some sexually explicit photographs, color slides, and VCR tapes of the school teacher involving himself in different acts with Navajo boys 10 to 11 years old.

Ms. SOLLER. This school teacher, although it was in a public school, was at Kayenta on Navajo?

Mr. SMALL. That's correct.

Ms. SOLLER. With all Indian students; is that right?

Mr. SMALL. That's correct. So the State charged him and took him to trial. The judge in Apache County found that the State had no jurisdiction and referred that to us.

On August 1, 1986 we started our investigation. We filed a Federal complaint the same date with the U.S. magistrate in Phoenix. He was subsequently arrested, and on October 6, 1986 he pleaded guilty to several sexual molestation charges and he was sentenced to 20 years in prison.

Ms. SOLLER. You said that there were VCR tapes and photos that were found?

Mr. SMALL. Yes.

Ms. SOLLER. Were you able to determine whether or not any of those had been sent out of the community to other sources?

Mr. SMALL. No, those records were prepared by Flint, himself, as to the best we can determine.

Ms. SOLLER. Now, the next case chronologically that the FBI handled in Arizona after Flint was the *John Boone* case; is that right?

Mr. SMALL. Yes; it was.

Ms. SOLLER. Could you explain a little bit of the details of that case?

Mr. SMALL. On February 4, 1987, we instituted an investigation on John Warren Boone, who had been employed for 9 years as a reading teacher at the Polacca Day School on the Hopi Indian Reservation.

On February 10, 1987, a Federal search warrant was executed on his premises and he was arrested the same day.

Ms. SOLLER. Pursuant to that search warrant was a chart found at his house——

Mr. SMALL. Yes.

Ms. SOLLER [continuing]. Detailing his sexual activities?

Mr. SMALL. Yes.

Ms. SOLLER. What was on that chart?

Mr. SMALL. This chart consisted of several pieces of paper. Across the top were nine columns describing various types of sexual activity, and down the side were listed 142 students of his. The sexual activity was cross referenced to the name.

We interviewed several of those victims and they essentially stated that what they experienced with Boone was so noted in the columns of the chart.

On March 11, 1987, he was indicted by a Federal grand jury in Phoenix charging him with 11 counts of molestation.

On June 8, 1987 his guilty plea was accepted in Federal court. He was sentenced to life plus 5 years.

Ms. SOLLER. You said the FBI first got in that in February 1987; is that right?

Mr. SMALL. Yes; February 4, 1987.

Ms. SOLLER. You got into that case as soon as you were contacted by BIA law enforcement; is that right?

Mr. SMALL. Yes.

Ms. SOLLER. Now, the next case chronologically in Arizona that involved a school teacher was the *J.D. Todd* case; is that right?

Mr. SMALL. As far as a school teachers are concerned, but there was another case involving a BIA maintenance utility worker by the name of Lavon Kinsel that we investigated.

Ms. SOLLER. That case was investigated and prosecuted both in Arizona and Utah; is that right?

Mr. SMALL. Yes.

Ms. SOLLER. But the next teacher case involved J.D. Todd?

Mr. SMALL. Yes.

Ms. SOLLER. At Greasewood; is that right?

Mr. SMALL. Yes.

Ms. SOLLER. The FBI was called in on that case in April 1987; is that right?

Mr. SMALL. April 29, 1987.

Ms. SOLLER. What happened after you were called into the case?

Mr. SMALL. An investigation was conducted. James Todd had been employed for 21 years at the Greasewood Toya BIA Boarding School. He was a GS-13 teacher supervisor. This investigation was based on some information that was given to us. It wasn't until December 2, 1987 that a Federal grand jury in Phoenix handed down a 26-count indictment charging numerous counts of sexual molestation.

Ms. SOLLER. Was Mr. Todd convicted in that case?

Mr. SMALL. Yes; he was. On December 3, 1987 he was arrested. On July 25, 1988 he was convicted by a jury trial in Phoenix of 13 counts of the indictment. He was sentenced to 99 years custody of the Attorney General. He was fined $50,000, given a $650 special assessment court cost, and 5 years probation upon his release.

Ms. SOLLER. Now, in the FBI's investigation in that case did you receive cooperation from the teachers and administrators at the Greasewood school?

Mr. SMALL. No.

Ms. SOLLER. What was the attitude of the administration there?

Mr. SMALL. In these cases a lot of times these employees work in isolated areas. It has been explained to me that there is sort of a state of denial that these acts could possibly have occurred, and so there is not a lot of cooperation with law enforcement.

Ms. SOLLER. In fact, was the FBI initially denied access to the children who were victimized in this case?

Mr. SMALL. Yes; but that was later worked out with the U.S. attorney and BIA in Washington and through the Education Department in Gallup. Employees were told that they had to cooperate.

Ms. SOLLER. Was there another case after J.D. Todd in which—

Senator MCCAIN. May I interrupt a second?

Ms. SOLLER. Yes.

Senator MCCAIN. What reason did the employees give for not cooperating?

Mr. SMALL. Generally that the FBI did not belong in the school systems.

Senator MCCAIN. Thank you.

Ms. SOLLER. Was there another case after that in which the FBI also received resistance from a school administration in its investigation?

Mr. SMALL. Yes; In the *Robert Arthur Schumann* case we received massive amounts of resistance.

Ms. SOLLER. Where did that case take place?

Mr. SMALL. That was at Kayenta, AZ.

Ms. SOLLER. What kind of a school was that?

Mr. SMALL. That's a public school.

Ms. SOLLER. With all Indian children at Navajo?

Mr. SMALL. I imagine that the majority are—the vast majority would be Indian.

Ms. SOLLER. But it is on Navajo land?

Mr. SMALL. Yes; it is.

Ms. SOLLER. What kind of reception was the FBI given there from the administration?

Mr. SMALL. Well, the problem comes down to—the attorneys that are advising the school board cite Arizona attorney general opinion 77-211, which was signed by Bruce Babbitt on November 9, 1977. Essentially it describes an opinion concerning law enforcement having access to students in public schools in Arizona.

This opinion, if I can just give a synopsis, generally states that if law enforcement officers have an arrest warrant, a subpoena, or a search warrant, or basically an order of the court, that they can execute that warrant on the school or on students during school hours, but that generally the access to students for any other reason is going to be set by the policy of the school.

The policy of the school at Kayenta is that law enforcement cannot access students without parental authority. In these felonious sexual molestation cases, that creates some really severe problems from our perception, in that many times the victims in a sexual molestation case are from dysfunctional families, and the parents are very difficult to locate. So after school that student is gone to the winds and we have a very hard time trying to locate them.

Additionally, some of the parents have given guardianship to the teacher who is taking care of the student, and that guardian is, in fact, the subject of our investigation, as in the *Schumann* case.

Ms. SOLLER. In the *Schumann* case, in fact, some of the children you wanted to talk to were wards of Mr. Schumann at the time; is that right?

Mr. SMALL. He was their guardian. Yes.

Ms. SOLLER. Was it the school's position that you could not talk to them unless he was present or the school administrators were present?

Mr. SMALL. Yes; the school was demanding that one of their counsellors or teachers be present during the interviews. They did not want us asking the child to come out of class to be interviewed. There were further problems in this case in that after we would interview the children, the teachers would then re-interview those children, putting, in our opinion, a lot of unnecessary pressure on them.

In some instances those children recanted, then the teachers would call us and say this person has now said that everything he told you is not true. We'd come back out and interview the child and the child would say that he was afraid of reprisals within the school system because he made a statement to the FBI in front of other teachers. So it is basically a pretty messy situation.

Ms. SOLLER. Did the school ever change its policy there and allow the FBI to have direct and unlimited access to the students?

Mr. SMALL. No; they have not. In fact, as late as last Friday I was speaking to their attorneys about this, and they still maintain that the policy of whether or not law enforcement are allowed to interview students will be set by the school.

Ms. SOLLER. In your experience, does such a policy obstruct the investigation of child sex abuse cases?

Mr. SMALL. Absolutely it does. Under the Federal system FBI agents cannot interview minors if they are subjects of investigations without their parents or an attorney present. I believe that there is some confusion about this, too. The students that we are trying to interview are not subjects of investigations; they are victims of the crimes and, in some cases, witnesses of the crimes.

Ms. SOLLER. Does the FBI continue to have ongoing investigations of school officials and BIA personnel in Arizona?

Mr. SMALL. Yes; currently there are three BIA personnel who have been charged federally and who are facing charges in district court in Phoenix; there is one family member that is charged; and there are some other non family subjects that have been charged in the sexual molestation cases.

Before the FBI can conduct a formal investigation we are required to develop a predication or a strong belief that the allegation has substance to it because these are very sensitive type investigations.

Ms. SOLLER. So when you talk about the number of investigations, those are cases that have gone far beyond the allegation stage?

Mr. SMALL. Yes.

Ms. SOLLER. And have gone to the stage of some substance; is that right?

Mr. SMALL. That's right. And I can also say to you that there are several other instances wherein facts are being developed to establish the predications for other investigations which will be opened targeting employees of the Government and, in my opinion, there will be more charges coming down.

Ms. SOLLER. In the cases that you have mentioned there have been two civil suits filed against the Government; is that right?

Mr. SMALL. Yes.

Ms. SOLLER. One in the *Boone* case and one called the *Terry Hester* case; is that right?

Mr. SMALL. Yes.

Ms. SOLLER. Mr. Perry, I'd like to turn to you for one minute and ask you what the extent of the sexual abuse problem is in South Dakota.

Mr. PERRY. In South Dakota we don't seem to have a serial-type or pedophile problem like Arizona. It is a family situation, individual cases throughout North and South Dakota.

Ms. SOLLER. Can you describe briefly what a typical case might be and how it would be handled?

Mr. PERRY. Typical case: we get a call from the South Dakota social services that a child has been molested. We then either have the child examined right away or decide to have the child interviewed. Normally we get a BIA or tribal officer involved with us right from the start and we try to find out if there is some substance to the allegation.

Ms. SOLLER. You mentioned earlier when you discussed the team approach that sometimes you have the child talked to by a psychiatrist or psychologist?

Mr. PERRY. That's correct.

Ms. SOLLER. What does that interview do in the court process?

Mr. PERRY. Well, it helps us tremendously because, number one, the child gets therapy right away. Normally the children that we have the psychologists talk to are reluctant witnesses. We have one particular doctor who has helped us on many cases who is able to get a statement from the victim, and then there is an exception to the hearsay rule, and if the victim is unable to testify at trial the doctor can testify, and she has done so many times.

Ms. SOLLER. Has that handling of these individual cases proved to be effective in South Dakota?

Mr. PERRY. Very effective. Yes.

Ms. SOLLER. Have there been any institutional cases to your knowledge involving schools or foster homes or any governmental facility in South Dakota?

Mr. PERRY. One. We had a school teacher we convicted of molesting fifth grade girls in a public school in Shannon County on the Pine Ridge Indian Reservation.

Ms. SOLLER. In your area now there are also ongoing investigations of governmental officials involved in sexual abuse of children; is that right?

Mr. PERRY. Yes.

Ms. SOLLER. One specifically includes somebody from IHS; is that right?

Mr. PERRY. We have one pending investigation in North Dakota on a Government official. Yes.

Ms. SOLLER. Mr. Small, do you find that there is a problem in the prosecution of juvenile offenders in Arizona?

Mr. SMALL. Yes; there is. The problem is that the Federal system has no place to incarcerate juveniles, so there is a reluctance to prosecute juveniles.

Ms. SOLLER. In your experience with some of these cases, are most of the offenders that have been prosecuted by the FBI individuals who were molested as children?

Mr. SMALL. It has been my observation that molesters create molesters. What I mean by that is that we have interviewed individuals who have identified people that molested them, and when we interviewed those people they have, in fact, said that they were molested, and many of them were molested in school by some of these teachers that have been prosecuted.

Ms. SOLLER. In Arizona do either the Federal Government or most tribes have facilities to treat juvenile victims or juvenile offenders?

Mr. SMALL. It is my understanding that when a juvenile is prosecuted in the Federal system, the Federal system then contracts with the State to incarcerate him and treat him.

Ms. SOLLER. Do you know whether or not that has been done in many cases involving juvenile sex offenders?

Mr. SMALL. No; I don't. The reason I don't is because under the guidelines the FBI primarily addresses only the adult offenders.

Ms. SOLLER. Mr. Perry, what is the situation involving juvenile offenders in your three-State area?

Mr. PERRY. Same as Arizona. Normally we refer those cases to tribal courts and to social services to handle.

Ms. SOLLER. With your experience with tribal facilities and with social services, do they have the resources to be able to deal with effective treatment for these juveniles?

Mr. PERRY. No; I don't think so.

Ms. SOLLER. Mr. Small, in your experience have you seen problems with the failure of one school system to report its findings or its allegations to another?

Mr. SMALL. Yes; there is a definite reluctance, and sometimes it is just not done, where a school board and/or school administrators will have proof beyond any doubt of the acts that this teacher did, and then they will not report it when he seeks employment somewhere else and he gets hired by another district or another school system. So that person is being passed on and on through the systems to avoid the embarrassment, perhaps, of prosecution.

Ms. SOLLER. Mr. Chairman, I have no further questions.

Senator DECONCINI. Gentlemen, thank you very much. Let me ask a couple of questions here.

How many agents are there in Arizona, Mr. Small?

Mr. SMALL. That investigate Indian crimes?

Senator DECONCINI. Yes; that do Indian crimes. I'm sorry.

Mr. SMALL. Approximately 10 agents.

Senator DECONCINI. Approximately 10 agents.

How about in your area, Mr. Perry?

Mr. PERRY. We have 15 agents in South Dakota and 7 in North Dakota. About 70 percent of the manpower is expended on Indian matters in those two States.

Senator DECONCINI. So in Arizona you have 10 to cover 250,000 Native Americans and 20 reservations?

Mr. SMALL. That's correct.

Senator DECONCINI. That's not very many, is it? Who makes the decision? Is it the U.S. attorney that decides how you are going to share jurisdictions of crimes on the reservation?

Mr. SMALL. Yes; we have joint meetings with the U.S. attorney and with the BIA to really discuss our manpower limitations, and it is really what agency he wants to assign certain crimes.

Senator DECONCINI. So when you meet you take into consideration that you only have 10 agents to investigate Indian crimes, and you see what resources they have?

Mr. SMALL. Right. We also handle all the other crimes: the frauds, the murders, assaults, and narcotics.

Senator DECONCINI. On the reservations?

Mr. SMALL. Right.

Senator DECONCINI. Do you know how many BIA law enforcement officials there are for Arizona?

Mr. SMALL. No; not exactly, and that has dramatically changed here within the past month because there was one BIA area that handled the Navajo Reservation, and they had about 12 to 14 BIA investigators on Navajo, alone. The Navajo Tribe has since taken over those investigative responsibilities, and leaving only one BIA investigator on the Navajo Reservation.

Senator DECONCINI. Everything else is by the tribe in that case?

Mr. SMALL. Yes.

Senator DECONCINI. Is that true in some other reservations in Arizona, too?

Mr. SMALL. The rest of the State has another area covered by Ted Qusula, and I would have to—I'm just very roughly estimating about 25 or 30 investigators.

Senator DECONCINI. For all of the other reservations?

Mr. SMALL. Yes; and what makes it even more confusing is that there are tribes that have their own investigative services and do a good job, such as Salt River and Tohono O'Odham. the Tohono O'Odham investigators present cases to the U.S. attorney.

Senator DECONCINI. Directly?

Mr. SMALL. Directly. Murder cases, sexual molestations.

Senator DECONCINI. Is that because the U.S. attorney is satisfied with the quality of those investigations?

Mr. SMALL. Yes; He has confidence in their investigative abilities.

Senator DECONCINI. Based on performance, obviously.

Mr. SMALL. Yes; the U.S. attorney has an agent in Tucson that works very closely with those investigators.

Senator DECONCINI. Now, as I understand it the BIA law enforcement officers report to the general agency superintendent rather than to a senior law enforcement officer; is that accurate?

Mr. SMALL. Yes; it is.

Senator DECONCINI. Does that pose a problem in and of itself? Would it be better if they reported to a law enforcement agency?

Mr. SMALL. By and large, in response to your question, there are many BIA investigators that are very good. They are very competent, and they are very capable, and they are certainly equivalent to FBI agents. But there are, on occasion, other investigators that do not really do a good job.

That impacts the FBI from the respect that we are sometimes called by the U.S. attorney to come back in and perhaps take one of their cases that is not going in the direction that he would like it to go in as far as witnesses being interviewed and evidence being gathered. So we have to sometimes step over these guidelines and conduct investigations on those areas.

Senator DeConcini. Does that happen frequently in Arizona?

Mr. Small. On occasion it does, yes. There have been a couple of areas that we have had some problems, although I would say the vast majority are competent and capable investigators.

Senator DeConcini. Mr. Perry, what about your area? Is it a problem there that the BIA law enforcement officers report to the agency superintendent rather than the law enforcement? Do you have this same problem?

Mr. Perry. Generally speaking I don't think it is a problem because on most of our reservations BIA is the prominent law enforcement agency. On Pine Ridge it is now tribal law enforcement, and for a while we had BIA and tribal, and BIA was reporting to the superintendent, and, of course, tribal to the chief of police. That was a problem. But not generally.

Senator DeConcini. Not generally?

Mr. Perry. Yes.

Senator DeConcini. You mentioned, I think, Mr. Small, about the major problem is finding the crime. Can you expand on that a little bit? Do you mean the statutory definition fitting the crime that has been alleged by somebody? Can you explain that?

Mr. Small. One of the problems in conducting investigations is to identify the crime problem. Now, our sources would be to go to BIA officers and ask if they have heard of any of these crimes and go to tribal police officers and ask if they have had any of these crimes reported to them—and the same with Social Services, Indian Health Services, and school administrators.

In my perception I would like, and I have asked that all sex crimes be reported to the FBI so that we could act as a central repository and ensure that all of these crimes are properly addressed.

Frequently these crimes are not addressed, and it is only after months and months of frustration that the victims will report back to us that the BIA and/or tribal police took no investigative action regarding the complaint.

Senator DeConcini. So if Congress were to make some changes you would recommend that we have all sexual abuse cases on reservations reported to the FBI?

Mr. Small. I couldn't really say that. I would really sort of defer that to my——

Senator DeConcini. Legislative experts in the Bureau?

Mr. Small. Yes; I know that in——

Senator DeConcini. I'm just looking at it from a practical point of view from your in-the-field position. That would be better from your standpoint of doing these cases if you had that access and, of course, you had the personnel to handle it?

Mr. Small. Yes; whether it is the FBI or whoever it is, if there was a mandatory reporting of crimes once they became found, I think it would be a very appropriate way to address the problem.

Senator DeConcini. Of course, you find the same problem we have heard, I'm sure, in the fact that there is no reporting of an alleged incident, a problem in and of itself, as there are in the States where a teacher or somebody who fails to report it can be subject to a crime, themselves. We don't have that as it relates to Indian country.

Mr. Small. I don't believe that exists in public schools on the reservations or in the BIA schools.

Senator DeConcini. That would be an improvement, of course, if we had that kind of a law, from your standpoint?

Mr. Small. Exactly.

Senator DeConcini. When you're making decisions when you meet with the BIA and the U.S. attorney and decide these jurisdictions, is it determined primarily on resources—how many people each agency has?

Mr. Small. Yes; jurisdictional issues are decided on resources and on the severity of crimes. Some of the initial allegations are unfounded. Some of the allegations are, at the outset, inappropriate for a criminal investigation and/or prosecution. For example, a case involving a 6-year-old inappropriately touching his 5-year-old sister, should better be referred to tribal or Social Services or even perhaps just let the family work it out, versus a case involving an adult 50-year-old man perhaps molesting a 5-year-old girl which would warrant a criminal prosecution. It is a difference of severity. Other considerations involve the institutional cases.

Senator DeConcini. So you put all that into the composite——

Mr. Small. Yes.

Senator DeConcini [continuing]. When you try to divide up these jurisdictional areas on the kinds of cases you're going to take yourself and the kind the BIA or the tribe is going to take?

Mr. Small. Yes.

Senator DeConcini. You've had experience with the tribal enforcement at Tohono O'odham. There are tribes that can handle these cases, I presume, is your conclusion if they are properly trained?

Mr. Small. Yes; and I also believe it is the U.S. attorney's opinion, too.

Senator DeConcini. The U.S. attorney concurs with you?

Mr. Small. Yes.

Senator DeConcini. Mr. Perry, how do you divide up the jurisdiction of these crimes? The same way, with the resources and the capability and the severity of the crime?

Mr. Perry. Basically we have guidelines, and they are pretty specific guidelines.

Senator DeConcini. Who sets those? The U.S. attorney?

Mr. Perry. The U.S. attorney and the FBI and BIA. We set those in 1984.

Senator DeConcini. You draw those up, yourself?

Mr. Perry. That's correct.

Senator DeConcini. I see.

Senator McCain.

Senator McCain. Thank you, Mr. Chairman.

Mr. Small, in your view why are there so many cases of child sexual abuse by teachers at schools in Indian country?

Mr. SMALL. Some of the feedback that we have gotten from the pedophiles after their convictions is that these pedophiles gravitated to the reservations because it was their perception that there was not a lot of supervision in their employment and that Indian children were not strictly supervised on the reservations, further the reservations are very remote, isolated areas and it would be an easy area for them to prey upon their victims.

Senator MCCAIN. Do you believe there is a chance, perhaps, that there was some kind of network of pedophiles that would pass this information around?

Mr. SMALL. I have heard of those networks in some of the larger cities. We have not found any of that on the reservations.

Senator MCCAIN. Do you believe that there should be a Federal law that would require BIA and other school authorities to be required to allow law enforcement officials to have access to children in sexual abuse cases?

Mr. SMALL. I would have to really defer to the Department of Justice about that. But personally, in the conduct of our investigations, if agents could approach the school, ask to see a student, and be allowed to interview that student it would be a great help.

Senator MCCAIN. Mr. Small and Mr. Perry, I scribbled out some notes here during your testimony—phrases like "reporting is chaotic," "no accurate systems for reporting", "no files are kept," et cetera. Do you see that there is a need for legislation to correct some of these problems?

Mr. PERRY. I'm sure that would be very helpful on the reporting issue. Our major problem is identifying, educating people as to child sexual abuse, and then reporting it expeditiously. That's the major problem.

Senator MCCAIN. Mr. Small.

Mr. SMALL. Yes, sir; I think that would——

Senator MCCAIN. Let me just ask one more question here. One of the most recent cases allegedly concerns a defendant who was caught molesting boys at one school, and the school board and its attorney worked out a deal in 1986 whereby he would be given good recommendations and would not be prosecuted if he would resign from the school, and then hired at another school and has since been arrested. Should there be a law against that?

Mr. SMALL. Senator, I'm not sure I understand your question.

Senator MCCAIN. According to the allegation, the school board and its attorney allowed a teacher who was caught molesting boys at one school and worked out a deal with him where they gave him good recommendations on the premise that he would leave the school. Do you think that was an appropriate way for that school board and attorney to behave?

Mr. SMALL. That case is a pending case which I am not at liberty to comment on. Generally, though, I'm of the opinion that when a crime is discovered it should be reported to law enforcement, that there is an appropriate behavior that should be displayed by teachers during the conduct of investigations, and that interference and re-interviewing victims and persuading them to change testimony and doing all these things—I know the U.S. attorney considers it borderline obstruction.

Senator McCAIN. Especially since it is fairly common knowledge that most pedophiles cannot be cured.

Thank you, Mr. Chairman.

Senator DECONCINI. Senator, you raise a good point, and I just want to reiterate that. I think Senator McCain just raised a question.

I'd just ask for your opinion, gentlemen. I realize the Justice Department would give us recommendation on legislation, but if a school or some entity or institution has a sexual abuse complaint and then doesn't report it and, in fact, makes a good recommendation for the person in order that they leave the school so they go someplace else, I would think that should be a crime. Wouldn't you think so?

Mr. SMALL. That has happened more than once.

Senator DECONCINI. It has?

Mr. SMALL. Yes.

Senator DECONCINI. In your own personal opinion does that border on criminal?

Mr. SMALL. Misrepresenting a felony addresses that, but it also—well, as I said, it is a pending case, and it certainly——

Senator DECONCINI. I don't want to get into that case.

What do you think, Mr. Perry?

Mr. PERRY. I agree with you absolutely.

Senator DECONCINI. It seems a good point Senator McCain brought out that that could actually be happening, and, as you just testified, it has happened on a number of occasions. It is an easy way to get out when you have an awkward situation: get the person to resign and then you don't have to go through the criminal matter and let it be somebody else's problems.

Ms. Soller, do you have any other questions?

Ms. SOLLER. No, Senator.

Senator DECONCINI. Gentlemen, thank you very much.

Mr. Small, thank you for the fine work you do in Arizona. We are very familiar with the work on the reservation and off and we appreciate it very much.

Mr. Perry, thank you for being with us today.

Mr. SMALL. Thank you.

Senator DECONCINI. Our next panel will be: Joyce Roy, Law Enforcement, Police Operations, Albuquerque Office of the BIA; Jerome Maine, Law Enforcement, Billings, MT, Office of BIA; and Robert Haley, General Chairman, Indian Law Enforcement Section of the International Association of Chiefs of Police in from Washington.

Gentlemen, would you come forward please and take your seats. Would you please raise your right hand?

[Witnesses sworn.]

Senator DECONCINI. Ms. Soller.

Ms. SOLLER. Thank you, Senator.

STATEMENT OF ROBERT HALEY, GENERAL CHAIRMAN, INDIAN LAW ENFORCEMENT SECTION, INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, JEROME MAINE, AREA SPECIAL OFFICER, BILLINGS, MONTANA OFFICE OF THE BUREAU OF INDIAN AFFAIRS, AND JOYCE ROY, CRIMINAL INVESTIGATOR, POLICE OPERATIONS, ALBUQUERQUE OFFICE OF THE BUREAU OF INDIAN AFFAIRS

Ms. SOLLER. Mr. Haley, for the record could you give us your current position and your background?

Mr. HALEY. I am the Law and Order Administrator for the Lummi and Swinomish Indian Tribes in Washington State. I have been in law enforcement 22 years as a city police officer working everything from narcotics and K-9 to an undersheriff of a county, Deputy Director of Security Police for the Kingdom of Saudi Arabia, and the last 12 years working with a number of different Indian tribes in Washington State.

Ms. SOLLER. The Lummi Tribe has about 3,000 members; is that right?

Mr. HALEY. That's right.

Ms. SOLLER. It is right next to the Swinomish Tribe?

Mr. HALEY. It is about 50 miles north of that.

Ms. SOLLER. You are the head of law enforcement for both tribes?

Mr. HALEY. Yes.

Ms. SOLLER. Do you also have contact with other tribal police officers and law enforcement officials through the International Association of Chiefs of Police?

Mr. HALEY. Through that, and also through the Northwest Association of Tribal Enforcement Officers, of which I have been an officer for 12 years.

[Prepared statement of Mr. Haley appears in appendix.]

Ms. SOLLER. Mr. Maine, what is your current position and your background?

Mr. MAINE. Right now I am the Area Special Officer for the Bureau of Indian Affairs in the Billings area, which encompasses Montana and Wyoming.

Ms. SOLLER. What is your background?

Mr. MAINE. I have been in law enforcement for approximately 15 years, and government service for about 25 years.

Ms. SOLLER. Ms. Roy, what is your current position and background?

Ms. ROY. I am a criminal investigator for the Bureau of Indian Affairs stationed at Albuquerque. I have 15 years in as a criminal investigator and 10 years as a uniformed police officer.

Ms. SOLLER. Are you also currently a member of the National Oversight Committee on Child Abuse with BIA and IHS?

Ms. ROY. Yes; I am.

Ms. SOLLER. Mr. Maine, please just very briefly explain how the field operation structure is structured for BIA law enforcement?

Mr. MAINE. The Billings area is made up of seven Indian reservations—six in Montana and one in Wyoming. Basically the area office functions as a liaison between the agencies and other State agencies, plus the academies and training institutions.

Ms. SOLLER. Now, each of these seven reservations would have its own BIA law enforcement and criminal investigators and police officers; is that right?

Mr. MAINE. Yes; they have their own police programs.

Ms. SOLLER. Those individuals report to the agency superintendent; is that correct?

Mr. MAINE. Yes; they do.

Ms. SOLLER. The agency superintendent is not an individual who generally has law enforcement training; is that right?

Mr. MAINE. Generally not.

Ms. SOLLER. Do you have any control or supervisory authority at all over the individual BIA officers in the field?

Mr. MAINE. No; I don't.

Ms. SOLLER. What is the relationship of the field officers in your office to the central office of law enforcement in Washington?

Mr. MAINE. Like I said, we only function in a technical advisory role. We don't supervise the field offices at all.

Ms. SOLLER. Ms. Roy, you are in one of the branches of the central office; is that right?

Ms. ROY. Yes; I am.

Ms. SOLLER. The central office is made up of how many different divisions?

Ms. ROY. There is the police operations, there is a special investigative unit, and then we have the Indian Police Academy located in Marana, Arizona.

Ms. SOLLER. Which unit are you in?

Ms. ROY. I am in police operations.

Ms. SOLLER. What are the general duties of police operations?

Ms. ROY. We are responsible for inspections and evaluations, recommending policy and procedures for law enforcement internal investigations upon request and teach police science subjects at the Indian Police Academy.

Ms. SOLLER. Mr. Haley, I'd like to turn to you to begin with and ask you, from your experience, what is the scope of the problem of child sexual abuse in your area and on the reservations over which you operate?

Mr. HALEY. Well, child abuse and child sexual abuse is a problem on the reservations. We find most of it being either inter-family or extended family on the reservations.

Ms. SOLLER. Have you been able to determine with any degree of reliability what the incidence rate is of child sexual abuse at either of the reservations?

Mr. HALEY. Part of the problem is: we do the BIA data forms and send them in and have—the last annual report I got back from the information I sent them was 1985.

Ms. SOLLER. When did you get that back?

Mr. HALEY. Last week.

Ms. SOLLER. So you have waited almost 4 years to get your information back from BIA?

Mr. HALEY. For 1985.

Ms. SOLLER. When did the tribes over which you have authority first recognize that child sexual abuse was a problem for their people?

Mr. HALEY. In 1983.

Ms. SOLLER. How was that recognition achieved?

Mr. HALEY. Well, through some very unofficial meetings involving people on the reservation that recognized the need, and we formed what we called a "flying squad," which would be similar to your child protective team, which is made up of representatives from Indian Health there on the Lummi Reservation because that Indian Health clinic services the four Northwest Indian tribes of Washington State.

Ms. SOLLER. When you reached this agreement which governmental agencies were involved in developing it?

Mr. HALEY. The child protective team and the agreement were two different things. The child protective team was mainly state and tribal people that were involved.

We reached an agreement on investigation and prosecution because we found that there was a lot of confusion. One of the original people of our child protective team had threats against her life and was murdered. We found her body about 4 months later, and that is still unsolved. So we found that we had very few people coming forward any more to help, much less report the crimes.

Ms. SOLLER. So what have you done about that?

Mr. HALEY. So in 1984 we began meetings with the State Child Protective Service and the Lummi Tribe and brought in different players to define roles for investigation and prosecution. We brought in the FBI to begin with, then the county sheriff, each one trying to gain their support and educate them as before we brought in the next governmental entity to talk with. Then the U.S. attorney, the county prosecutor—so those were the people that signed the agreement.

Ms. SOLLER. When you were working on this agreement in 1983 there was no federal policy on the development of child protection teams within the BIA at that time, was there?

Mr. HALEY. No, we had no interplay with the BIA with regards to this, at all.

Ms. SOLLER. In fact, the Federal Government did not recognize the importance of child protection teams until 1986; is that right?

Mr. HALEY. That's right.

Ms. SOLLER. When you were developing this agreement what was the role that BIA Social Services had in helping to facilitate this?

Mr. HALEY. They had no role at all. We just asked for their input and——

Ms. SOLLER. What was their attitude?

Mr. HALEY. That they had no services to provide that out of the agency.

Ms. SOLLER. What is your relationship currently with BIA law enforcement in the investigation of child sexual abuse cases?

Mr. HALEY. Presently, as of the memo sent to us November 17, 1988, the BIA will only investigate crimes against property with the value of over $3,000. In regards to crimes against person we rely on the FBI.

Ms. SOLLER. So does the BIA have any role currently at Lummi or Swinomish in the investigation of child sexual abuse crimes?

Mr. HALEY. They have the authority, it is just that they don't.

Ms. SOLLER. Why is that?

Mr. HALEY. There are 12 tribes in the agency, and only 2 criminal investigators.

Ms. SOLLER. Two BIA criminal investigators?

Mr. HALEY. Two BIA criminal investigators to service those 12 tribes.

Ms. SOLLER. Are they able to do that?

Mr. HALEY. No, they are not.

Ms. SOLLER. Does Lummi or Swinomish have its own criminal investigators?

Mr. HALEY. No; we don't have the funds at either of the reservations to provide 24-hour police protection for first response, much less to have the criminal investigator.

Ms. SOLLER. So upon whom do you rely to do the criminal investigations in the child sexual abuse cases?

Mr. HALEY. The way that our agreement is set up, all reports are made to the state CPS.

Ms. SOLLER. That's child protective services?

Mr. HALEY. Yes; we then notify the FBI, they respond, and I send an officer with them that is specially trained in sexual abuse for their initial interviews and contacts with suspects, witnesses, victims, because within the tribal community the Native Americans seem to be able to establish trust if a tribal police officer goes with an agent from an outside jurisdiction.

Ms. SOLLER. Has the FBI been able to adequately handle all of the child sexual abuse cases at Lummi or Swinomish?

Mr. HALEY. Not adequately, because they have reduced their office in half out of Bellingham, which handles those two counties where those reservations are in.

Ms. SOLLER. So how many FBI agents are currently in your area?

Mr. HALEY. Basically at this point we have one.

Ms. SOLLER. How much territory does that one officer have to cover?

Mr. HALEY. I think he handles four counties.

Ms. SOLLER. Does he just handle the Indian cases in those counties?

Mr. HALEY. No; when we had two agents both of them told me that their time was 50 percent each for Indian cases at Lummi, alone. Now I just have one agent.

Ms. SOLLER. Why was the office reduced? Was it lack of work?

Mr. HALEY. No; the agent retired and they didn't replace him basically because they said that—what the agent that was retiring told myself and the other police chiefs at our meeting was that the inspection unit of the FBI came and suggested closing down the office in Bellingham.

Ms. SOLLER. How would that affect your tribes if the office was closed?

Mr. HALEY. It would mean that they would have to either come out of Everett or out of Seattle, and those agents would not have familiarity with the reservation or the people; where the agent that we have now has been there quite a number of years and has developed a lot of trust with the people.

Ms. SOLLER. What has the response of the U.S. attorney's office been to the presentation of sexual abuse cases coming from these reservations?

Mr. HALEY. We have had one conviction in 7 years by the U.S. attorney, and numerous, numerous letters of declination from the U.S. attorney.

Ms. SOLLER. In general, what is stated as the reason in these letters of declination, if you can generalize?

Mr. HALEY. Generally that it is a one-on-one—there are no other witnesses, the child victim makes a difficult witness, therefore they decline to prosecute.

Ms. SOLLER. In these cases have you had other opinions other than the U.S. attorney's office as to whether or not some of these cases should have been prosecuted?

Mr. HALEY. Yes; we have.

Ms. SOLLER. Who have those opinions been from?

Mr. HALEY. County prosecutor, county child abuse investigators, and FBI agents.

Ms. SOLLER. In these cases have these individuals—the other prosecutors and the FBI agents—told you in some cases that they thought a case was good and were surprised that the U.S. attorney's office declined it?

Mr. HALEY. Yes.

Ms. SOLLER. Why are these cases generally one-on-one? Why isn't there more evidence obtained?

Mr. HALEY. Because the pedophiles really don't want witnesses around unless they are victims.

Ms. SOLLER. Why is physical evidence generally not obtained in these cases?

Mr. HALEY. In a lot of cases the child takes—they don't come right out and tell that they have been abused; therefore, it may be anywhere from a couple of days to 1 year or later, and by that time the physical evidence that would be found by a physician or pathologist would be gone.

Ms. SOLLER. Is the delay in getting the FBI or other criminal investigators to the scene any factor at all in the absence of physical evidence, in your opinion?

Mr. HALEY. Yes.

Ms. SOLLER. How?

Mr. HALEY. Well, without an FBI agent to originally respond right away, what we find is that the victims are interviewed over and over again because if the—normally we go out with a CPS investigator and the FBI if we can. That's what we'd like on an initial interview so there is not a number of people that interview the victims, because the victims tend to get very scared being asked the same thing over and over again, and it then inhibits the psychologist or the people that have to work with them to start their healing process.

Ms. SOLLER. Are you currently satisfied with the amount and availability of resources that are available for the investigation and prosecution of these cases?

Mr. HALEY. No; I am not.

Ms. SOLLER. What would you like to see done?

Mr. HALEY. Basically, I guess I would like to see personnel and funds brought in to work within our investigation and prosecution agreement, and I would like to see the U.S. attorney place a higher priority on all crimes in Indian country, especially those involving child sexual abuse, neglect, and abuse.

Ms. SOLLER. Mr. Maine, what is the scope of the problem of child sexual abuse as you see it?

Mr. MAINE. Basically in the Billings area it is hard to put a handle on it because nobody keeps any centralized records or devout record system, but it is pretty wide spread.

Ms. SOLLER. Now, there have been reports there that there has been a lot of abuse in foster home settings or leading to foster home settings. Is that an accurate statement?

Mr. MAINE. Yes.

Ms. SOLLER. What are some of the problems that have developed in that area with foster care?

Mr. MAINE. On one reservation there was an individual suspect who was eventually prosecuted for abusing about 32 children approximately.

Ms. SOLLER. Where was that?

Mr. MAINE. That was in the Fort Peck Reservation.

Ms. SOLLER. Was that at the Hope Ranch Foster Home?

Mr. MAINE. Yes.

Ms. SOLLER. Who was the abuser in that case?

Mr. MAINE. His name?

Ms. SOLLER. What relationship was he to the children?

Mr. MAINE. He was the house parent.

Ms. SOLLER. How did this case come to light?

Mr. MAINE. It was reported through the staff that worked at the Hope Ranch, itself.

Ms. SOLLER. Had there been problems reported about the Hope Ranch before the case was actually turned over to the investigators?

Mr. MAINE. Yes; on at least two occasions there was a social worker that had talked to one of the child victims and had reported it to law enforcement.

Ms. SOLLER. Why it wasn't discovered earlier?

Mr. MAINE. Why it wasn't discovered?

Ms. SOLLER. Why wasn't it investigated earlier?

Mr. MAINE. It wasn't investigated earlier because I think there was just a neglect from the individuals who ran the Hope Ranch to have it investigated.

Ms. SOLLER. What specifically was this house parent charged with doing?

Mr. MAINE. He was accused of sexually abusing about 32 boys and girls and was charged with carnal knowledge.

Ms. SOLLER. Was he convicted in this?

Mr. MAINE. Yes; on four counts.

Ms. SOLLER. Are there other cases, in your opinion, like the case at Hope Ranch, that have occurred or are currently ongoing in the Montana area?

Mr. MAINE. Yes.

Ms. SOLLER. Why aren't these cases being brought forward?

Mr. MAINE. In some cases—there is one case on one Indian reservation where the tribal court has refused to cooperate with an examination of a child victim and allowing the child to go off the reservation for an examination and forensic interview.

Ms. **Soller**. What kind of problems has that created?

Mr. **Maine**. They wouldn't allow the child to be interviewed by a specialist and to have a physical examination and, therefore, had no evidence for the prosecution.

Ms. **Soller**. What would have solved that problem, in your opinion?

Mr. **Maine**. I think if the U.S. attorney could have ordered the child in some way off the reservation or ordered the examination on the reservation.

Ms. **Soller**. Are there other instances of group homes in which you think that the supervisors or the house parents are abusing the children there that have not so far come to prosecution?

Mr. **Maine**. Yes; there is one related case from the Hope Ranch where there was a second suspect, and that individual is now under investigation.

Ms. **Soller**. Why has the investigation of these cases been so slow?

Mr. **Maine**. Because of a reluctance of some individuals for reporting the cases.

Ms. **Soller**. Do you think it would help to have a Federal law mandating reporting in circumstances such as foster homes?

Mr. **Maine**. It definitely would.

Ms. **Soller**. Now, have there also been cases in Montana in which children have been taken out of their homes and placed in foster homes and then had Social Services forget to remove them?

Mr. **Maine**. Yes; there have been some cases.

Ms. **Soller**. Why have these cases been allowed to occur?

Mr. **Maine**. I think primarily because of a lack of staff to supervise and follow up on placements of children.

Ms. **Soller**. In the investigation of some of these cases of child sexual abuse what is the BIA law enforcement's relationship with the FBI?

Mr. **Maine**. We have a written policy in the Billings area that was issued by the U.S. attorney, and in that policy the BIA investigators have equal authority with the FBI to investigate and present cases to the U.S. attorney's office.

Ms. **Soller**. You were here when Mr. Small and Mr. Perry testified. Are the relationships that they described with BIA law enforcement the same or different than the one you have in Montana?

Mr. **Maine**. At some locations they are.

Ms. **Soller**. At the locations where it is not working, what are the problems?

Mr. **Maine**. Some of the problems are that the FBI and the Justice Department are oriented toward physical evidence, and in sexual abuse crimes, most crimes there is no physical evidence.

Ms. **Soller**. When you say that the FBI and the U.S. attorney are oriented toward physical evidence, what happens when there isn't physical evidence in a case?

Mr. **Maine**. They decline the case.

Ms. **Soller**. In your opinion, has that happened often?

Mr. **Maine**. It has happened very often.

Ms. SOLLER. What are the resources of the Social Services Division in Montana to handle the number of child abuse cases that occur?

Mr. MAINE. There is usually on each reservation, the seven reservations, one social worker and usually one aide on staff, and that is the extent of their staff.

Ms. SOLLER. In your opinion, in dealing with these individuals, are they able to handle the case load that they have?

Mr. MAINE. Definitely not.

Ms. SOLLER. Do you feel that they are able to adequately cover the cases of child sexual abuse that occur?

Mr. MAINE. No.

Ms. SOLLER. What is the relationship in Montana with the investigative agencies and the Indian Health Service?

Mr. MAINE. The investigative agencies for the Bureau?

Ms. SOLLER. Yes.

Mr. MAINE. I think there are some conflicting philosophies and policies between BIA and IHS. For instance, the IHS is reluctant to release information on a child sexual abuse investigation.

Ms. SOLLER. Is there currently a child protection team in Montana?

Mr. MAINE. Yes, each reservation is supposed to have an active team.

Ms. SOLLER. Are they functioning as well as the child protection team that was described at Lummi?

Mr. MAINE. No; they are not.

Ms. SOLLER. What are the problems?

Mr. MAINE. Most of the problems are that the team is supposed to get together either weekly or bi-weekly and discuss cases and devise strategy on how to attack these cases. Some members just don't come and they develop their own little protection teams, themselves. And so you are operating sometimes with two or three child protection teams on one reservation, and as a result you don't get the referrals to law enforcement for investigation.

Ms. SOLLER. Why don't you get the referrals? If there are more child protection teams why isn't that better if there are more resources there?

Mr. MAINE. Because one team will think that the other team is reporting it, where if there was just one effective team they could be consistent in reporting cases for investigation.

Ms. SOLLER. You heard Mr. Small and Mr. Perry talk about the commitment that had been made in South Dakota and in Arizona by the FBI and the U.S. attorney's office. Do you have that same kind of commitment to the prosecution of child sex cases in your area?

Mr. MAINE. Not to that extent. No.

Ms. SOLLER. Ms. Roy, in your capacity both as a criminal investigator and as a member of the National Oversight Committee what is your perception of the scope of the problem of child sexual abuse?

Ms. ROY. I feel that it is very serious. Also I feel that we don't have a handle on how many cases are occurring out there. It is just that I'm getting more referrals that are reported to my office.

Ms. SOLLER. Why, with all the reporting that is going on and with all the child protection teams, don't we have an accurate handle?

Ms. ROY. One, for law enforcement our computer system is not in operation yet, so everything is done manually. I feel that we could get a better handle if our office was receiving copies of these three-day major crime violation reports from each area, which would really aid me in tracking these cases down.

Ms. SOLLER. By "three-day major violation report," that's a report that is required to be filled out by Bureau investigators within 3 days of the report to them?

Ms. ROY. Of a major crime. Right.

Ms. SOLLER. In your opinion, are most Bureau offices complying with that 3-day requirement?

Ms. ROY. Some are and some aren't.

Ms. SOLLER. With child sexual abuse cases what is the problem with the delay and what problems do the delay cause in the handling of these cases?

Ms. ROY. I see a delay in other service providers, and by that I mean Social Service or Indian Health not promptly reporting cases to BIA law enforcement.

Ms. SOLLER. I'd like to discuss some specific cases that I think have come to your attention that may illustrate some of the problem. Are you familiar with a case that recently surfaced at Jicarilla?

Ms. ROY. Yes. I am.

Ms. SOLLER. That was with an individual named Mr. Goodtracks; is that right?

Ms. ROY. Yes, it is still under investigation.

Ms. SOLLER. Can you discuss some of that case?

Ms. ROY. This person was recently hired by the BIA in July 1988.

Ms. SOLLER. In what capacity?

Ms. ROY. As a social worker. I had a call from Christine Brown of BIA Education, that she had received a call from the National Center for Missing Children reporting that this person had a number of children in his custody. So I immediately contacted the agency and started checking into it.

Ms. SOLLER. In fact, the National Center is a private, non-profit organization, right?

Ms. ROY. Yes.

Ms. SOLLER. They reported, didn't they, that this individual also had a history of sexual abuse with the BIA; is that right?

Ms. ROY. Yes.

Ms. SOLLER. So this private agency was telling the Government about one of its own past employees; is that right?

Ms. ROY. Right.

Ms. SOLLER. In fact, did your investigation show that the Bureau of Indian Affairs Social Services Department that hired Mr. Goodtrack had not been aware of his prior history with the BIA until after they hired him?

Ms. ROY. Right.

Ms. SOLLER. If the call had not come in from the National Center do you believe that they would have discovered this past record by this employee?

Ms. ROY. I really can't say. I would like to add that this employee had also been hired by IHS 6 months prior, and this information was in his OPF file and was overlooked. He was also hired as a social worker there.

Ms. SOLLER. So your investigation showed that in his file was information showing that he had been charged with sexual abuse in a BIA facility in the past, and neither IHS nor BIA, when they hired him, discovered this?

Ms. ROY. No, he wasn't charged, but he was terminated. I have failed to find out if he was actually charged criminally any place.

Ms. SOLLER. But there were at least allegations of child sexual abuse in his record that went unnoticed by both agencies?

Ms. ROY. Yes.

Ms. SOLLER. What happened after you brought this to the attention of the Jicarilla Social Services?

Ms. ROY. He was terminated.

Ms. SOLLER. Now, are you also aware of a case at Standing Rock?

Ms. ROY. Yes.

Ms. SOLLER. In that case is there an allegation that a government employee has engaged in sexual abuse with children?

Ms. ROY. Yes.

Ms. SOLLER. After these allegations were made was this employee removed from contact with children?

Ms. ROY. No.

Ms. SOLLER. What has happened?

Ms. ROY. From latest information I have, BIA Social Service has placed children into his custody.

Ms. SOLLER. What is his current employment position at Standing Rock?

Ms. ROY. Social Service worker.

Ms. SOLLER. Employed by what agency?

Ms. ROY. Indian Health.

Ms. SOLLER. Has Indian Health, to your knowledge, made any effort to remove [illegible] contact with children after these allegations?

Ms. ROY. Not to my knowledge.

Ms. SOLLER. [illegible] brought to our attention recently that there are some [illegible] Nett Lake in Minneapolis; is that true?

Ms. ROY. Yes.

Ms. SOLLER. What is the situation there and what is it causing for the community?

Ms. ROY. The captain of police at Nett Lake had sent me approximately 25 cases bearing from child neglect to child abuse to child sexual abuse. I have reviewed these cases and forwarded them back for more investigation.

Ms. SOLLER. Why were the cases sent to you in the first place?

Ms. ROY. Because the captain made a complaint to the field solicitor's office that he wasn't getting any prosecution out of the Minneapolis office.

Ms. SOLLER. Minneapolis office of what?

Ms. ROY. U.S. attorney's office.

Ms. SOLLER. Why weren't these cases being prosecuted there?

Ms. ROY. Number one, the police were trying to do the investigations. There was no criminal investigator there because the position had been abolished for lack of funds. These cases weren't developed fully.

Ms. SOLLER. In other words, they were being investigated by officers that were not competent to investigate them?

Ms. ROY. They weren't trained.

Ms. SOLLER. What result and impact did this have on the victims of these cases?

Ms. ROY. I feel it has a serious impact. In fact, I had contacted the captain to make sure that these children had been removed from the homes and placed in protective custody.

Ms. SOLLER. Had they been?

Ms. ROY. He said they had been.

Ms. SOLLER. Is the lack of expertise at Nett Lake causing a problem with the prosecution of alleged sex offenders?

Ms. ROY. Yes.

Ms. SOLLER. In your position in police operations do you receive complaints and allegations from across the country?

Ms. ROY. Yes; I do.

Ms. SOLLER. What kinds of referrals are made to you in that office?

Ms. ROY. Most of my referrals come from education. I do get some referrals from people that call me because of—I speak at conferences, so they are calling me and reporting cases and asking me to assist them in any way I can.

Ms. SOLLER. In your office in police operations do you have any contact with the newly-created branch of criminal investigation?

Ms. ROY. Yes; I do.

Ms. SOLLER. Is that what is commonly called the SIU branch?

Ms. ROY. Yes; it is.

Ms. SOLLER. Who is the overseer over that branch?

Ms. ROY. Bill Aubertine.

Ms. SOLLER. Who does Mr. Aubertine report to?

Ms. ROY. Mr. Donovan.

Ms. SOLLER. Where is Mr. Donovan located?

Ms. ROY. In Washington.

Ms. SOLLER. Do you know what the mandate of that unit is?

Ms. ROY. I don't understand.

Ms. SOLLER. What it was set up to do. What was that unit set up to do?

Ms. ROY. We believe it was set up to investigate child sexual abuse cases. And later narcotics.

Ms. SOLLER. How closely do you work with that unit?

Ms. ROY. Fairly close.

Ms. SOLLER. Is your office located near their office?

Ms. ROY. We are in adjacent offices.

Ms. SOLLER. Who is responsible for keeping the records of the number of cases that unit handles?

Ms. ROY. The police operations secretary was assigned to that task.

Ms. SOLLER. That would be your office?

Ms. ROY. Right.

Ms. SOLLER. Are you familiar with the sex abuse cases that are being handled by that unit?

Ms. ROY. Yes; I am.

Ms. Soller. Do you think it would be fair to say that the amount of time being spent on sex abuse cases by that unit is 50 percent?

Ms. Roy. No.

Ms. Soller. How much do you think are being handled by that unit?

Ms. Roy. Re-considering the question, of the 52 cases referred to central Office West, from May to Dec. 1988, SIU was assigned 54% of this figure. This includes incomplete cases, re-assignments, referral to service provides, U.S. attorney's office and/or tribal courts and unfounded cases.

Ms. Soller. Have you had referrals to you to investigate cases that were originally referred to the officers in SIU?

Ms. Roy. Yes; I had one case that was reassigned to me.

Ms. Soller. Why was it reassigned?

Ms. Roy. Because the investigator didn't investigate it.

Ms. Soller. Was that a case in which it was originally assigned to an SIU investigator who had been specifically hired to do child sexual abuse cases and drug cases?

Ms. Roy. Yes; the receiving agency assigned it out to the field, and the field assigned it to one of the SIU investigators. Because nothing was done it was reassigned to me.

Ms. Soller. Have there been cases that were originally assigned to SIU or referred to SIU that were directly assigned to you rather than to one of the individuals who was specifically hired to do those cases?

Ms. Roy. Yes.

Ms. Soller. In your position in police operations would it be a normal part of your job activities to investigate individual cases?

Ms. Roy. Not really, but I have been doing it. I do a lot of coordinating information between the U.S. attorney's office, the FBI and the BIA.

Ms. Soller. And what kinds of cases have you been doing?

Ms. Roy. Mostly child sexual abuse. These are personally investigated by me upon authorization and direction by Mr. James Donovan.

Ms. Soller. Mr. Maine, are you familiar with the creation of this SIU unit?

Mr. Maine. Yes.

Ms. Soller. What information did you, as a BIA officer in the field, get about the creation of that unit?

Mr. Maine. That it was created to investigate child sexual abuse and drug investigations.

Ms. Soller. Have you ever referred any cases there?

Mr. Maine. Yes.

Ms. Soller. What kinds of cases?

Mr. Maine. One case I had asked for some assistance in a drug investigation.

Ms. Soller. Did you get it?

Mr. Maine. Yes; there as an individual investigator assigned to the Billings area to do an investigation, and he went to one of the reservations and stayed there for about four days, and then he left the reservation and apparently called his supervisor and notified his supervisor that the reservation didn't have a drug problem.

Ms. SOLLER. If you have so many child sexual abuse cases in Montana, why aren't some of those being referred to the SIU unit?

Mr. MAINE. Well, in our experience they haven't really conducted any investigations. One I referred down there, I asked for some assistance on a sex abuse cases and I didn't get any response.

Ms. SOLLER. You referred a sex abuse case specifically to the SIU unit and were not given any assistance?

Mr. MAINE. Not specifically, but to the Albuquerque office.

Ms. SOLLER. When did you make that referral?

Mr. MAINE. It was in December.

Ms. SOLLER. Is the investigation just waiting until there is an individual who is assigned to it?

Mr. MAINE. It is being investigated now.

Ms. SOLLER. Mr. Haley, are you familiar with that unit?

Mr. HALEY. Well, I am as of today. I had heard rumors and had seen money appropriated by Congress for it, but we have not received anything from the central or area offices in regards to this unit.

In the rumor that I had heard it was put together for drug enforcement. Until today I had no idea that it was going to investigate child sexual abuse cases.

Ms. SOLLER. So you have not been aware that there was such a unit specially created by Congress which is supposed to specialize in difficult cases of this nature?

Mr. HALEY. No.

Ms. SOLLER. If, in fact, there was such a unit available that was able to do that would you have tried to make use of it?

Mr. HALEY. Definitely.

Ms. SOLLER. Mr. Maine, do you think that such a unit is workable?

Mr. MAINE. Not in its present form. I think that if they were located in specific areas—in our case in the Billings area, if the investigators could be located in our area and respond out to the agency.

Ms. SOLLER. Would it help you in your area to have an expert in the investigation of child sexual abuse close at hand?

Mr. MAINE. Yes.

Ms. SOLLER. Is there anybody like that in any of the area agency offices in your area now?

Mr. MAINE. Not anyone that is specifically assigned to sex abuse. No.

Ms. SOLLER. Is there anyone specially trained in it at all?

Mr. MAINE. No; there is not.

Ms. SOLLER. What is the closest specially trained person that you know of who could investigate these cases?

Mr. MAINE. The social workers and BIA social workers and criminal investigators that are closest.

Ms. SOLLER. Mr. Maine, how do you feel that the current reporting policy that exists in the BIA is working?

Mr. MAINE. It is not working very well.

Ms. SOLLER. Why?

Mr. MAINE. Because it is not consistent. The reporting is not consistent. You get different entities reporting sexual abuse.

Ms. SOLLER. Ms. Roy, how do you feel it is working?

Ms. **Roy**. It is not working very well.

Ms. **Soller**. Would it help, in your opinion, to have a federal law that would mandate the reporting of sex abuse cases in Indian country?

Ms. **Roy**. Definitely.

Ms. **Soller**. Mr. Maine.

Mr. **Maine**. Yes; it would.

Ms. **Soller**. Mr. Haley, is there a reporting policy at either Lummi or Swinomish?

Mr. **Haley**. Yes; we have a reporting policy of our own that we make mandatory for all responsible employees involved in the area that would have knowledge of child abuse to make those reports, and it is mandatory under law.

Ms. **Soller**. Was this just a policy that the tribe adopted, or was it a tribal law that was enacted?

Mr. **Haley**. It is a tribal law.

Ms. **Soller**. Is that mandatory law working?

Mr. **Haley**. Yes; it is.

Ms. **Soller**. What kind of background checks into employees that are hired by the tribes are you able to conduct, Mr. Haley?

Mr. **Haley**. We can conduct through the tribe, but the BIA will not conduct background or criminal justice information for us.

Ms. **Soller**. If the tribe was going to hire a teacher to work at one of its schools, how far could it go into investigating that person's past history and past record?

Mr. **Haley**. If and when they sign a release of information of the privacy act, then we run National Crime Information computer checks and state and local checks for any convictions of misdemeanors and felonies.

Ms. **Soller**. Do you have access to past BIA records or files to see if there were allegations reported against a person?

Mr. **Haley**. No; we have no access to any BIA records.

Ms. **Soller**. Ms. Roy, as a member of the National Oversight Committee are you familiar with the BIA's new policy on background checks?

Ms. **Roy**. Yes; I am.

Ms. **Soller**. Do you know whether or not that policy applies to just bureau agencies, or does it also apply to tribally run agencies?

Ms. **Roy**. Just Bureau agencies.

Ms. **Soller**. If a tribe wanted to have a teacher that it was hiring checked, could they use that policy and do so now?

Ms. **Roy**. If the tribe adopted the BIA policy.

Ms. **Soller**. Mr. Maine, what is being done in your area to check the backgrounds of BIA personnel and of tribal personnel that the tribe would like to check out?

Mr. **Maine**. We just had a policy come down from the central office in Washington, DC, which requires background investigations for school teachers, aides, or individuals who work with children.

Ms. **Soller**. Does that apply to tribally run programs?

Mr. **Maine**. No; it does not.

Ms. **Soller**. Have you worked out anything in your area to help the tribes who want to have an employee's background checked to do so?

Mr. MAINE. We're going to initiate a background investigation program in the Billings area and get a computer where it can access state criminal history information and check individuals that way.

Ms. SOLLER. You said this was a policy in the Billings area. Isn't it a policy bureauwide?

Mr. MAINE. No; not that I know of.

Ms. SOLLER. Is it something that has just been worked out between your office and the tribes there?

Mr. MAINE. Yes; it is our office, the Indian Health Service, working through the child protection teams, and Social Services.

Ms. SOLLER. Do you think it would help if there was an ability of the tribe to go directly to the Federal Government and access the current system that they have in place?

Mr. MAINE. Yes, it would really help.

Ms. SOLLER. Ms. Roy, do you?

Ms. ROY. Yes.

Ms. SOLLER. Senator, I have no further questions.

Senator DECONCINI. Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

I'd like to thank the witnesses for their testimony here today. From your testimony and that of previous witnesses there are simply not adequate procedures or mechanisms to address the problems of child abuse and sexual molestation on Indian reservations.

Is that an accurate statement, Ms. Roy?

Ms. ROY. Yes.

Senator MCCAIN. Mr. Maine.

Mr. MAINE. Yes.

Senator MCCAIN. If I could start from left to right, then, what do we need to do in your view?

Mr. HALEY. Well, I think the passing of the bill for mandatory reporting is a start. We need to get the cooperation of all the Federal agencies, including the U.S. attorney, in the aggressive investigation and prosecution of these cases.

We need to provide the tribal governments with the personnel and the expertise and the resources beyond the prosecution and investigation, and that's the help of getting the victims into treatment so it does not snowball in regards to the victims then becoming perpetrators, as we heard this morning. We're doing that now. In fact, when we interview perpetrators, what we're finding is that we are then also taking reports of them being victims. Some of them are past the statute of limitations for anything to be done, but sometimes they are not. So it is developing into multiple cases based upon just one original report.

Senator MCCAIN. There is no doubt that we need better counselling for the victims.

Mr. HALEY. No doubt.

Senator MCCAIN. Mr. Maine.

Mr. MAINE. I think the changing of the law is one thing. I believe that would be good. The other thing is that I think we need more investigators to locate in the ten areas in Indian country, and those investigators could respond out to the agencies.

One of the problems of the local investigators right now on Indian reservations is that they are usually involved with the victims or suspects through friendship or family, so they can't really be objective and conduct objective investigations.

Senator McCAIN. But apparently the SIU, which was set up for this purpose, is not carrying out those functions.

Mr. MAINE. No; to my knowledge they are not.

Senator McCAIN. Ms. Roy.

Ms. ROY. I agree with what was said. I would like to emphasize that treatment of the victims is desperately needed, either by Indian Health or contract funds or whatever. I also see a need to do a study on suicides, because I am seeing a lot of attempted suicides and have victims as young as 8 years old attempting suicide because of abuse, and I think we need to really address that matter before it gets out of hand.

Senator McCAIN. Thank you very much.

Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Senator McCain.

Did any of you testify—if you did, excuse my question—of child abuse cases in schools that you have investigated or know about?

Ms. Roy.

Ms. ROY. No; but I am currently coordinating investigations on children that have been in boarding schools in Arizona.

Senator DECONCINI. How about you?

Mr. Maine.

Mr. MAINE. Not in the schools, sir.

Senator DECONCINI. None in the schools?

Mr. MAINE. No.

Senator DECONCINI. And how about you?

Mr. Haley.

Mr. HALEY. None.

Senator DECONCINI. None. And the one that you are doing now, not to get into the case at all, but are you finding cooperation with the schools to give you access to the students without the parents, or do you have problems there?

Ms. ROY. No; there are problems. In fact, this case has come to my attention about three weeks ago, and when the officers went out to the school to check on their report the principal didn't want to provide the names of the victims.

Senator DECONCINI. Would not provide the names of the victims, much less let them be interviewed?

Ms. ROY. The children had been removed from the school and placed in a different foster home. But this has been worked out, supposedly. Now, I don't know. At the present time I am working with the FBI agent that is assigned to the case.

Senator DECONCINI. Mr. Maine, you testified that you referred a drug case to the SIU on a particular reservation and they sent somebody out who stayed four days and then gave a report or something saying that there was no drug problem on the reservation?

Mr. MAINE. Gave a verbal report. I never did get a written report.

Senator DECONCINI. You got a verbal report?

Mr. MAINE. Yes.

Senator DeConcini. Can you say from your experience if there is a problem on that reservation with drugs? How do you substantiate that?

Mr. Maine. It is one of the major problems in our area on that particular reservation. We just recently got eight indictments.

Senator DeConcini. Eight indictments on drug abuse or dealing——

Mr. Maine. Yes; drug traffic, and we're probably going to go for about 20 more indictments.

Senator DeConcini. Is there any reason you can't name that reservation, or would you rather not?

Mr. Maine. I'd rather not at this point.

Senator DeConcini. Fine.

Do you all believe that there should be a mandatory reporting law, as the States have adopted, on the Federal level as it relates to Indian Country?

Ms. Roy.

Ms. Roy. Yes; I do.

Senator DeConcini. Mr. Haley.

Mr. Haley. Yes, sir.

Senator DeConcini. Mr. Maine.

Mr. Maine. Yes, sir.

Senator DeConcini. You also, I presume, have no problems with the idea of a special trained unit to do sexual abuse investigations? In other words, the SIU, if it were properly personnel filled and trained and available in your area, you would think that would be advantageous?

Mr. Maine. The concept is good. I believe it is good if it were located, like I said, areawide.

Senator DeConcini. Do you agree with that?

Ms. Roy. I agree with it providing the people are picked from across the country, because even though I am an Indian person, I am an Indian from Minnesota, and when I work cases in Navajo there is a language barrier, so you need to have investigators that are——

Senator DeConcini. Who can speak the langauge. Very good point.

Ms. Roy [continuing]. Who can speak the language. Right.

Mr. Haley. I have a problem with that. Dealing at a tribal level rather than a BIA level, as I said, we have 12 tribes in the agency in which we have two investigators. Tribes have no control over the BIA investigators. When they investigate something on my reservation I can't get a report. When that case is declined by the U.S. attorney—and we've had to take child sexual abuse cases into tribal court because the U.S. attorney will decline and we don't want to just let it go. I can't get a report of the BIA investigator if they did participate in that investigation. The FBI is hesitant in giving over their report. That's why we have to send a police officer, which over half of my department is trained in sexual abuse training.

Senator DeConcini. But in the tribes that you represent they have tribal laws——

Mr. Haley. Right.

Senator DECONCINI [continuing]. For sexual abuse, so you have a process to go about.

Mr. HALEY. We have a process. Right.

Senator DECONCINI. Now, if you had a unit that was trained to do the investigations you don't think that would be of much advantage to you if they don't share it with you, if they declined?

Mr. HALEY. Yes; if they are not going to be responsive for our needs, which is some of the stuff that we have found in the past. The concept is great if, as you are saying, the resources are available and their requirement to report that information back to the tribe for prosecution and to testify if it is declined by the U.S. Government.

Senator DECONCINI. Then you'd like to have access to what their investigation is?

Mr. HALEY. Definitely.

Senator DECONCINI. With that distinction it would be advantageous to you?

Mr. HALEY. Yes.

Senator DECONCINI. Now, as I understand it, Mr. Maine, BIA law enforcement officers report to the general agency superintendent rather than to senior law enforcement officers; is that correct?

Mr. MAINE. That's correct.

Senator DECONCINI. Are there problems with this in the lack of lines of authority and jurisdiction within the BIA and law enforcement?

Mr. MAINE. Yes; I think there are some problems because sometimes the law enforcement services are diverted for other purposes.

Senator DECONCINI. Priorities, and what have you?

Mr. MAINE. Yes; for the agency superintendent's priorities.

Senator DECONCINI. And what do you think? How should that be rectified?

Mr. MAINE. I think 2 years ago there was proposed legislation to have line authority, and that legislation died. That would give line authority from the agency programs to the area special officer, which I am, and then——

Senator DECONCINI. To the law enforcement officer.

Mr. MAINE [continuing]. And then I would answer to the central officer.

Senator DECONCINI. Yes; and you think that would be better?

Mr. MAINE. Yes.

Senator DECONCINI. Now, I'd like to ask each of you to answer this question. Have you experienced, or have you heard of any problems for tribal law enforcement that are caused by tribal politics?

Ms. Roy.

Ms. ROY. Yes; I have.

Senator DECONCINI. Is that a frequent problem?

Ms. ROY. I wouldn't say it is frequent. It depends on the location.

Senator DECONCINI. Does that include sexual abuse cases?

Ms. ROY. Yes; it does.

Senator DECONCINI. Mr. Maine, how about you?

Mr. MAINE. Yes; there is some interference from time to time. I don't think it is really a major problem, but there is some interference.

Senator DECONCINI. That involves sexual abuse cases, as well as other law enforcement?

Mr. MAINE. Yes; all cases.

Senator DECONCINI. Yes?

Mr. MAINE. Yes.

Senator DECONCINI. Mr. Haley.

Mr. HALEY. Yes; there is. I would have to agree with Mr. Maine.

Senator DECONCINI. Thank you.

Do you have any suggestions on how to cope with that particular problem? Is one possibility the FBI doing those investigations solely, separating even further the local involvement of either BIA or the tribal law enforcement?

Mr. MAINE. I think that these teams, if we had teams in the areas and they respond out to the agencies they are less subject to political pressure than——

Senator DECONCINI. Not those people right there?

Mr. MAINE. Yes.

Ms. ROY. I agree.

Senator DECONCINI. Mr. Haley.

Mr. HALEY. Yes.

Senator DECONCINI. I have no further questions.

Ms. Soller.

Ms. SOLLER. None.

Senator DECONCINI. Thank you very much for your testimony. You've been very helpful to us today.

Mr. HALEY. Thank you.

Ms. ROY. Thank you.

Mr. MAINE. Thank you.

Senator DECONCINI. Our next witness was to be James Donovan, head of the BIA Law Enforcement. He was scheduled to be here at this time; however, he has called in ill. We hope he will be able to be here tomorrow to respond to the charges and questions raised about law enforcement at the BIA.

Our next panel will be: William Mehojah, Branch Chief, Office of Indian Education Programs here in Washington; Christine Brown, Assistant Branch Chief of the Indian Education Program here in Washington; and Doctor Kenneth Ross, Assistant Director.

[Witnesses sworn.]

Senator DECONCINI. Ms. Soller will conduct the questioning. Thank you for being here and thank you for waiting. We're sorry to keep you.

STATEMENT OF KENNETH ROSS, ASSISTANT DIRECTOR FOR SOUTH AND WEST AGENCY OPERATIONS, BIA; GALLUP, NM; CHRISTINE BROWN, ASSISTANT BRANCH CHIEF, OFFICE OF INDIAN EDUCATION PROGRAMS, BIA; AND WILLIAM MEHOJAY, BRANCH CHIEF, OFFICE OF INDIAN EDUCATION PROGRAMS, BIA

Ms. SOLLER. Dr. Ross, would you please give us your current position and your background?

Mr. ROSS. My current position is Assistant Director for South and West Agency Operations.

My background is, in terms of formal education, a baccalaureate degree from Black Hills State College in South Dakota; Master's in guidance and counselling from Northern Arizona University in Flagstaff, AZ; and Ph.D. in educational administration from the University of Minnesota.

My work experience: I started my professional education career with the BIA in 1962 at Fort Wingate, NM. I served about 7 years with the Bureau of Indian Affairs and then left the Bureau to go back to South Dakota as the State Director of Indian Education for 3 years. The Johnson O'Malley Federal program was transferred to the tribes. I then moved to Minneapolis, MN to work on my Ph.D. I also worked part time for the Minnesota State Department of Education.

Upon graduation with my doctorate I moved to Arizona and was a public school superintendent in Window Rock, AZ, for 9 years. In 1980 I came back into the BIA as an Assistant Agency Superintendent in Albuquerque for Southern Pueblos Agency.

In 1982 I was detailed into Washington, DC, and worked on the minimum academic standards for education and dormitory criteria and served as the Acting Director for the Office of Indian Education Programs for approximately 4 years on a detail assignment.

In 1986 I reassumed my permanent position, and in November of that year that position was relocated to Gallup, New Mexico. I am still serving in that capacity.

Ms. SOLLER. Doctor Ross, do you have any specific training in the handling of child sexual abuse issues?

Mr. ROSS. No; I do not.

Ms. SOLLER. Mr. Mehojah, what is your current position and your background, please?

Mr. MEHOJAH. My current position is Branch Chief for Elementary and Secondary Education for the Central Office.

I began working 17 years ago as a guidance counsellor in South Dakota at a high school, and have worked in a dormitory program as a guidance counsellor and as a supervisor.

I have also been an administrator at the agency level, an administrator in Alaska for an area office, and four 4 ago I moved here to the central office where I am the branch chief.

Ms. SOLLER. Ms. Brown.

Ms. BROWN. I am currently an Education Specialist half time for special education, and I am handling the child abuse for elementary and secondary.

I have a master's degree in speech and language pathology; I have an education administration credential in special ed.

I have had almost 15 years in government, 10 of which have been with the BIA.

I have had experience in public schools, in a hospital setting. I was a full staff member for a psychological clinic. I have had academic and actual experience in suicide, alcohol and drugs, and child abuse.

I also have a background in crisis intervention, and I have found that that doesn't help me at all raising my three children. [Laughter.]

Ms. SOLLER. Do you have any special training in child sexual abuse cases?

Ms. **Brown**. Yes; I do.

Ms. **Soller**. Are you also a member of the National Oversight Committee with the BIA and IHS?

Ms. **Brown**. Yes.

Ms. **Soller**. Dr. Ross, as I understand it, the BIA Education Department is separated in general from the rest of the Bureau administration; is that correct?

Mr. Ross. Yes; it is.

Ms. **Soller**. How is it generally structured?

Mr. Ross. The chart which is provided closest to myself reflects the organizational structure of the BIA as created by Public Law 95-561 in 1978.

Ms. **Soller**. Prior to that law the administration of education programs was centralized with the rest of the administration of the Bureau; is that right?

Mr. Ross. Yes; it was.

Ms. **Soller**. That public law separated it into two separate administrations; is that correct?

Mr. Ross. Separate operations. Yes.

Ms. **Soller**. As you will note on the chart, the Deputy to the Assistant Secretary for Indian Affairs Director for Indian Education Programs is directly under the Assistant Secretary. The Deputy for Education then has an office staff, and I will primarily concentrate with that division that is entitled "Division of Educational Programs," because that is the office that deals with child sexual abuse issues. In that office is located the Chapter 1 offices, the exceptional education offices, and the educational specialists for elementary and secondary education. Now, your offices are directly under the Deputy Assistant; is that right?

Mr. Ross. We have three assistant directors: one for the north and east agencies, one for post secondary and area education functions, and one for the south and west agencies.

Ms. **Soller**. You are the Assistant Director for the south and west?

Mr. Ross. South and west, and we report directly to the Deputy to the Assistant Secretary for Education within BIA.

Ms. **Soller**. In the field am I correct that teachers in BIA schools generally report to the principals?

Mr. Ross. Yes.

Ms. **Soller**. Who then generally report to the Agency Superintendent for Education?

Mr. Ross. Yes, ma'am.

Ms. **Soller**. Who then report to you?

Mr. Ross. Yes.

Ms. **Soller**. That complicated structure from the field of the teachers all the way up to you and then to the director is a fairly long one; is that right?

Mr. Ross. Yes; it is.

Ms. **Soller**. Does that create any problems, specifically for the handling of child sexual abuse cases?

Mr. Ross. Yes; it does from the standpoint that in the south and the west education agencies where I have direct supervisory and oversight responsibility, there are 12 separate agencies in three different States primarily located in Arizona, New Mexico, and Utah.

There are 94 of the total 181 schools within the Office of Indian Education Programs, Bureau of Indian Affairs within the jurisdiction of the South and West Agencies.

Ms. SOLLER. Mr. Mehojah, do you see that that elongated chain of command creates any problems for the handling of child sex abuse cases?

Mr. MEHOJAH. In some cases it does. The way we're operating now is that we are in 23 States, and we have schools in all 23 States. Whenever a teacher or anyone who suspects child abuse has occurred and they make a report, they make a report two ways, one is verbal and one is written.

In some cases, due to time differences and geographic dispersion of the schools, it takes some time for that notice to come up to the central office.

In other ways, too, we have problems which we try to deal with as best as we can in meetings, conferences, telephone calls, and what not, of getting the word out through memos or by telephone calls or fax machines on changes of policy or new policies that are issued from our office.

Ms. SOLLER. Are there problems in actually communicating from the central office the policies to make sure that the teachers in the field understand them or are aware of them?

Mr. MEHOJAH. We have had some problems, not only in child abuse, but with other issues, that we have been trying to get disseminated to the field. We have found in some cases that some of the agency offices say that they don't receive some of the memos—or, in some cases, the area offices.

What happens then is that they're trying to get—if the agency office hasn't seen a memo, then that means that the schools don't receive it, and so that creates some problems.

Ms. SOLLER. I'd like to turn for a minute specifically to the area of the background check policy, if we could. What was the policy on checking a person's background before December 1987?

Mr. MEHOJAH. Before December 1987, there was a policy that we had that was actually a standard operating procedure where the person who was hiring an individual, let's say as a teacher, would review their 171—it's called a "Standard Form 171." They also had another form they filled out concerning their employment history and personal history which is a fairly short form, and a fingerprint chart, which we call a "Standard form 87."

What would happen is that the person hiring that individual would have all those forms completed and would usually hire the individual and they would begin work, in some cases, because we needed to get teachers into the classroom. And then they would send those documents forward to OPM to have the background checks performed.

In some cases the background checks would take 3 months, sometimes 6 months, sometimes up to 1 year.

Senator DECONCINI. Who would perform that?

Mr. MEHOJAH. The Office of Personnel Management.

Senator DECONCINI. OPM would perform those——

Mr. MEHOJAH. OPM.

Senator DECONCINI [continuing]. At your request?

Mr. MEHOJAH. Yes.

Senator DECONCINI. Thank you.

Mr. MEHOJAH. So now we have been trying to address that problem and have come up with a new background check policy.

Ms. SOLLER. Under the current policy what is supposed to happen?

Mr. MEHOJAH. Under the current policy, which was issued in November 1988, what we're trying to do is to make sure that before an individual actually is hired to go into a classroom or into one of our institutions, like a dormitory, that several things happen. One is that three references are contacted by the person who is hiring that individual, and they would actually do that by picking up the phone and calling those three references.

They would also call three past employers, and they would also contact OPM with some specific information about that individual, and OPM would check it on their computer records file to find out if there was any problem with that individual from any past employment in the Federal Government.

So that would be done prior to the issuance of those forms like the 171 and the 87 and a new form that we're using called the "Standard Form 86." That form is in much more detail than what we had previously been using.

Those forms are then issued to OPM. We have been holding discussions with OPM as late as last week to try to find out how long this process is going to take.

Ms. SOLLER. Well, according to the procedure that came out in November 1988 that process was supposed to take 30 days; isn't that right?

Mr. MEHOJAH. Yes; that's correct.

Ms. SOLLER. Now, that procedure has been in place then for three months; isn't that correct?

Mr. MEHOJAH. Yes; it is.

Ms. SOLLER. Is it meeting the 30-day deadline?

Mr. MEHOJAH. Well, in discussions with OPM last week, what I understand is that it will probably take 60 days.

Ms. SOLLER. The old policy that was in place was not supposed to take over 1 year to do the reviews, right?

Mr. MEHOJAH. That's correct.

Ms. SOLLER. But it did?

Mr. MEHOJAH. In some cases, yes.

Ms. SOLLER. The new policy is supposed to occur in 30 days, now 60 days, right?

Mr. MEHOJAH. Yes.

Ms. SOLLER. What are the guarantees that that deadline is ever going to be met in view of the past history?

Mr. MEHOJAH. Well, we hope that in working with OPM up front and by flagging our cases and putting them up on a higher level of sensitivity where we have moved our teachers and all of our education people from non-sensitive to a sensitive position, and what that means to OPM, then, is that they become a higher priority to have them processed through their system.

Ms. SOLLER. What checks exist in the system, if any, to determine whether or not a hiring agency is actually going to follow that procedure?

Mr. MEHOJAH. The only thing that we can do now is to go back and do some checks and surveys with our agency offices and area offices to find out whether or not it is actually occurring.

We also are going to be checking with OPM, too, to find out how fast they are processing them.

Ms. SOLLER. Now, is this policy available or this background check procedure available to a tribe that would want to hire a teacher for a contract school and would like to have the background check?

Mr. MEHOJAH. Presently no. We have had discussions with OPM last week and have talked about it, but that has to be worked out yet.

Ms. SOLLER. Are you aware whether or not this policy applies to other agencies in the Federal Government operating on Indian land such as IHS?

Mr. MEHOJAH. As far as I know it does not. It only applies to us.

Ms. SOLLER. Now are you aware of a case that was brought to the public's attention in 1981 in Arizona, the case of Terry Hester?

Mr. MEHOJAH. Yes.

Ms. SOLLER. In that case, as I understand it, the individual was hired by the BIA to work in a school after he reported on his record that he had been arrested in the past for a sex offense in Oklahoma; is that right?

Mr. MEHOJAH. Yes; that's right.

Ms. SOLLER. That case was in 1981, right?

Mr. MEHOJAH. Yes.

Ms. SOLLER. The current background check policy that has gone into effect went into effect in November 1988; is that right?

Mr. MEHOJAH. That's right. Yes.

Ms. SOLLER. Why did it take the Bureau 7 years from the time that the *Hester* case was revealed until now to get an effective background check policy into place?

Mr. MEHOJAH. At the time when the *Hester* case came about, unfortunately there was supposed to have been a check when the personnel office at the area level was to do an audit of all of the hires that we had completed. We didn't pick it up in Education, and the area office did not pick it up. He used a special code on the back of his 171 which was an Oklahoma code that should have tipped us off and perhaps we should have caught it.

Ms. SOLLER. So Hester, on his employment application, under the space "Have you ever been arrested" wrote the Oklahoma statute number?

Mr. MEHOJAH. Yes.

Ms. SOLLER. Which, if checked, would have revealed that that was a child molesting statute?

Mr. MEHOJAH. Yes; that's correct. So now it has taken us this long, and it shouldn't have taken us this long, but hopefully now addressing it we will not make those same mistakes.

Ms. SOLLER. Ms. Brown, aside from the most obvious cases like Hester are you aware of circumstances in which schools or facilities have just passed on their problem and teachers or employees have arisen at new facilities when they were gotten rid of for sexual abuse reasons at their old facility?

Ms. **Brown**. I'm aware of some of the ones that have come up recently.

Ms. **Soller**. Are you specifically aware of the incident in Cherokee, NC, involving Paul Price?

Ms. **Brown**. Yes; I am aware of it.

Ms. **Soller**. In that case, Mr. Price had a prior employer who had notified the Cherokee School System that he had been released for sexual abuse; isn't that right?

Ms. **Brown**. Yes.

Ms. **Soller**. That was in 1985, right?

Ms. **Brown**. Yes.

Ms. **Soller**. Did the Bureau make any efforts after that case, to your knowledge, to put into place a reporting policy that would have prevented that kind of passing on?

Ms. **Brown**. No.

Ms. **Soller**. Are you also aware of a case in the mid-1980s in New Mexico, the case of Kenneth Schmidt?

Ms. **Brown**. I'm not that familiar with it. I have heard about it recently.

Ms. **Soller**. In that case Mr. Schmidt had, from 1972 to 1984, three charges against him, two for child sexual abuse and one for child abuse when he left his employment with the BIA; isn't that right?

Ms. **Brown**. Yes.

Ms. **Soller**. In fact, he left in 1984 while he was under investigation by the BIA for sexual abuse?

Ms. **Brown**. Yes.

Ms. **Soller**. He was then hired at a contract or tribally run school, at which point he was charged with molestation of young children; isn't that right?

Ms. **Brown**. That is my understanding.

Ms. **Soller**. Is it your understanding, too, that the BIA did not have then in effect a policy that would have required them to attempt to locate or to notify the new employer that this individual had allegations against him?

Ms. **Brown**. That is correct.

Ms. **Soller**. Are you also aware of a pending case right now, the case of Mr. Bennally at Navajo, in which a school system worked out a deal with the defendant so that they would not inform any new employer about the fact that he was being released for child sexual abuse?

Ms. **Brown**. Yes; it was a public school system.

Ms. **Soller**. Is there any system in place now that would require, if that had been a BIA school, that they would have notified the new employer?

Ms. **Brown**. There is nothing in place right now, but we are working on something.

Ms. **Soller**. So that currently, although there is a reporting policy of suspicions of child sexual abuse, there is nothing that would prevent a BIA school from quietly letting a teacher go and not reporting it to the new employer; is that right?

Ms. **Brown**. Hopefully with the new awareness that won't be happening, but you are correct in that there is nothing in place right now.

Ms. SOLLER. I would now like to address, if we could, the old reporting policy that existed. Mr. Mehojah, what was the policy that existed at the Bureau of Indian Affairs before December 1987?

Mr. MEHOJAH. Before December 1987 it was the standard operating procedure that any major incident would be reported to what we called the line official, like the agency superintendent or the area education program administrator, and that person would also notify the central office. That did not specifically address child abuse.

Ms. SOLLER. When did a policy first go into effect that did specifically address child abuse?

Mr. MEHOJAH. Specifically there was one that we issued in December of 1987, and we subsequently reissued another one and updated the December 1987, reporting policy in April 1988.

Ms. SOLLER. The first case we heard here today, in which there were reports of abuse by a teacher to a school, was prior to 1985. Why did it take from 1985, when the *Price* case came to light, until late 1987 to get any kind of reporting policy at all in place?

Mr. MEHOJAH. I think perhaps one reason was awareness, and the other thing is that perhaps they weren't reported like they should have been. We should probably have had a policy in place, but we did not, that specifically addressed this issue.

Ms. SOLLER. Since the policy has gone into place that indicates that disciplinary action can be taken against an employee who fails to report, has any disciplinary action been taken in any case against such an employee?

Mr. MEHOJAH. Presently there has not been any disciplinary action taken. No.

Ms. SOLLER. Do you think that a Federal law mandating reporting under penalties of incarceration would be a valuable tool to have in Indian Country?

Mr. MEHOJAH. In my opinion I would think it would. Yes.

Ms. SOLLER. Ms. Brown, what do you think?

Ms. BROWN. In my opinion I think it would.

Ms. SOLLER. Dr. Ross, what do you think?

Mr. ROSS. Definitely.

Ms. SOLLER. I'd like to discuss, if we might, a couple of cases which have illustrated the problems that have existed with failure to report.

Ms. Brown, in the *Price* case are you aware now that teachers and parents were reporting incidents of child sexual abuse to the administration?

Ms. BROWN. You mean in North Carolina?

Ms. SOLLER. Yes.

Ms. BROWN. Yes.

Ms. SOLLER. When did you become aware of the *Price* case?

Ms. BROWN. I had heard about it about two years ago, and it was briefly discussed in a meeting that I attended.

Ms. SOLLER. Was any action taken by the Bureau after the *Price* case came to light to implement immediately any policy that would have mandated or would have prohibited such failures to report?

Ms. BROWN. Not that I am aware of.

Ms. **Soller**. In fact, were you aware that there were reports made to a Ms. Widenhouse during the time that she was the principal there?

Ms. **Brown**. Yes.

Ms. **Soller**. Ms. Widenhouse left her job as principal there and entered a special training program at the central bureau; isn't that right?

Ms. **Brown**. That is correct.

Ms. **Soller**. That is considered a promotion, isn't it?

Ms. **Brown**. I guess it could be viewed as that.

Ms. **Soller**. While she was at the Central Bureau the question arose as to whether or not she had known anything while she was at Cherokee about Mr. Price; isn't that right?

Ms. **Brown**. Yes.

Ms. **Soller**. In fact, the administrators who heard this failed to investigate what her knowledge was, didn't they?

Ms. **Brown**. Yes.

Ms. **Soller**. In fact, Ms. Widenhouse recently left the Bureau, didn't she, on her own volition?

Ms. **Brown**. Yes.

Ms. **Soller**. But before that she had been in what position?

Ms. **Brown**. She was a Special Assistant to the Director in Education.

Ms. **Soller**. That is definitely a promotion from principal of a school, isn't it?

Ms. **Brown**. Yes, it is.

Ms. **Soller**. Was any disciplinary or administrative action ever taken against her?

Ms. **Brown**. No.

Ms. **Soller**. Dr. Ross, I'd like to address, if I could now, the case of John Boone at Polacca on the Hopi Reservation. When were you first informed about Mr. Boone's difficulties?

Mr. Ross. I was informed on the day of his arrest.

Ms. **Soller**. Had you ever heard before that from either the agency superintendent or the principal that there had been reports by law enforcement to the school about Mr. Boone?

Mr. Ross. No.

Ms. **Soller**. Had you ever been informed that there had been reports by parents alleging abuse 1 to 2 years before he was arrested?

Mr. Ross. No.

Ms. **Soller**. Are you aware now that such reports were made to the principal?

Mr. Ross. I am.

Ms. **Soller**. The principal at that time was Mr. Goff; isn't that right?

Mr. Ross. Yes.

Ms. **Soller**. Thomas Goff. Mr. Goff, after the reports were made, from what you know now, never reported these incidents to law enforcement, did he?

Mr. Ross. To my knowledge, no.

Ms. **Soller**. Or to Social Services?

Mr. Ross. Not to my knowledge.

Ms. **Soller**. Mr. Goff, after he left the Polacca Day School, went to Tohono O'odham to be a principal; isn't that right?

Mr. ROSS. To Santa Rosa Boarding School.

Ms. SOLLER. That's at the Tohono O'odham Reservation?

Mr. ROSS. Yes; it is.

Ms. SOLLER. Was he ever disciplined for failing to report this up the chain of command?

Mr. ROSS. No; he was not.

Ms. SOLLER. In fact, isn't it——

Senator MCCAIN. May I ask why not?

Mr. ROSS. I'm not sure. His immediate supervisor is the Agency Superintendent for Education.

Senator MCCAIN. Can you provide us with a written answer for the record as to why this individual was not disciplined and instead sent to another school when testimony before this committee indicates that mothers went to this principal and the principal responded to them, "You want to hurt this guy's career?" Will you respond in writing to that question please?

Mr. ROSS. Yes, sir.

[Information to be supplied appears in appendix.]

Ms. SOLLER. Dr. Ross, isn't it also true that within the last several days or weeks it has been determined or learned that there are allegations against Mr. Goff personally that he has been abusing students at Tohono O'odham?

Mr. ROSS. On Thursday evening of last week I received a phone call at my personal residence indicating that a parent had called in alleging illicit sexual solicitation of minor children at the Santa Rosa Boarding School. As of 9 o'clock Friday morning that was turned over to the FBI agents in Gallup, NM, for a complete investigation.

Ms. SOLLER. Do you think, in fact, in your opinion, that if some kind of administrative or disciplinary action had been taken against Mr. Goff or taken in regard to him after he failed to report the parents' allegations or failed to investigate them that this incident now at Tohono O'odham might not have happened?

Mr. ROSS. In my personal opinion, yes.

Ms. SOLLER. Do you know whether or not Mr. Goff or the agency superintendent at the time ever made any reports of what they had learned to the central office before Mr. Boone was arrested?

Mr. ROSS. Would you restate that?

Ms. SOLLER. Do you know whether or not anybody told the central office about the problems with Mr. Boone before he was arrested?

Mr. ROSS. No; I'm not aware of any reports submitted to the central office.

Ms. SOLLER. After Mr. Boone was arrested in February 1987 isn't it true that the first actions that the Department of Education at any level took for the community were in August 1987, 6 months later?

Mr. ROSS. Yes.

Ms. SOLLER. In fact, from February 1987 until August 1987 there was no outreach or intervention by the school administration, itself, was there?

Mr. ROSS. No; not to my knowledge.

Ms. SOLLER. There wasn't any outreach or intervention by the agency superintendent, was there?

Mr. Ross. No.

Ms. Soller. Nor by your office?

Mr. Ross. No.

Senator McCain. I hate to interrupt, Counsel. Can you tell us why?

Mr. Ross. In terms of the outreach activities with families, one of the problems that we were faced with was that we did not have access to the names of individuals. I'm sure that we should have and could have possibly conducted community awareness seminars in terms of sensitivity to the overall problem. We have since done that throughout Arizona and New Mexico.

Ms. Soller. Ms. Brown, just briefly, you were part of that first outreach to the community in August; isn't that right?

Ms. Brown. Yes.

Ms. Soller. What was IHS' participation at that time?

Ms. Brown. They really had very limited participation. That was an effort devised by the Bureau. Four of us went down there to do a review, site visit, and to assess the problem.

Ms. Soller. Was IHS invited to participate?

Ms. Brown. IHS was invited to one of the sessions.

Ms. Soller. Did they come?

Ms. Brown. One representative came, but that was about it.

Ms. Soller. Do you know whether they made any independent outreach on their own?

Ms. Brown. I don't know.

Ms. Soller. Dr. Ross, I'd like to talk about what came after Mr. Boone's arrest, if we might. Now, at the time that Mr. Boone's activities were first reported by a parent Mr. Goff was the principal, right?

Mr. Ross. Yes.

Ms. Soller. We have just discussed what has happened to him. The next principal who was there when Mr. Boone was arrested was Mr. White; isn't that right?

Mr. Ross. Yes; it is.

Ms. Soller. Do you know whether—Mr. White has since died; isn't that correct?

Mr. Ross. Yes.

Ms. Soller. Do you know whether or not there has been any effort by any level of the Department of Education or the Office of Indian Education Programs to contact the teachers there to determine whether or not they had notified the school of inappropriate conduct by Mr. Boone?

Mr. Ross. There is nothing to my knowledge.

Ms. Soller. No efforts have been made? Or the teachers didn't make the reports?

Mr. Ross. I don't have any information.

Ms. Soller. So that there wasn't any communication by the administration to the teachers to find out what they had been reporting?

Mr. Ross. Nothing in writing.

Ms. Soller. After Mr. White died, a new principal had to be hired for the new school year; isn't that right?

Mr. Ross. Yes.

Ms. SOLLER. Now, this was a school in a community that had just been devastated by the actions of one of its teachers; isn't that right?

Mr. ROSS. Yes; it is.

Ms. SOLLER. What efforts were made to make sure that the next administration in place was a stable, solid, and supportive administration for the community?

Mr. ROSS. The hiring of principals is relegated to the local school boards in terms of the vacancy announcements, and is supervised by agency superintendents for education. They coordinate the receipt of all of the applications, review the applications, do the individual background checks, and then make a recommendation to the school board or in concert with the school recommend an individual for appointment.

Ms. SOLLER. Now, the principal who was hired was an individual named Ted Eastwood; isn't that right?

Mr. ROSS. Yes.

Ms. SOLLER. Mr. Eastwood had absolutely no expertise at all or special experience in the handling of child sexual abuse cases, did he?

Mr. ROSS. Not to my knowledge.

Ms. SOLLER. Now, to your knowledge, did the agency superintendent ever make special visits to the school during the beginning of that school year to make sure that everything was operating in an optimum way?

Mr. ROSS. There is no specific record of his personally being on campus.

Ms. SOLLER. Did your office conduct any such investigation?

Mr. ROSS. No; I did not.

Ms. SOLLER. Now, in fact, in December 1987 it came to your attention that, in fact, things were not only not optimal, they were disastrous at the school; isn't that right?

Mr. ROSS. Yes, ma'am.

Ms. SOLLER. The reports that you received were that Mr. Eastwood, the principal, was operating in an erratic manner and that some other school personnel had smelled alcohol on him; isn't that right?

Mr. ROSS. That was the report.

Ms. SOLLER. Mr. Eastwood was not removed though, was he?

Mr. ROSS. Mr. Eastwood was not removed. No, I did have a meeting with the Phoenix Area office, the U.S. attorney, the Phoenix Area Solicitor, criminal investigations, and based on that meeting a couple of things happened; one, I directed the agency business manager, who actually is also the personnel officer for the agency, to conduct an investigation to find out whether or not we could obtain written affidavits or statements from the individuals who had reported that Mr. Eastwood had been seen or been observed drinking on campus.

Ms. SOLLER. But until these reports were brought to your attention you were completely unaware——

Mr. ROSS. I was completely——

Ms. SOLLER [continuing]. Of the situation?

Mr. ROSS. Yes; completely unaware of it.

Ms. **Soller**. After the allegations were brought to your attention, the focus was on trying to get written support for these allegations.

Mr. Ross. That, and I also took immediate action to reassign the guidance counsellor at that specific time, as well.

Ms. **Soller**. In fact, the guidance counsellor had problems that were brought to your attention by individuals outside your office as well; isn't that right?

Mr. Ross. Yes, ma'am.

Ms. **Soller**. The problems that the guidance counsellor was reported having was by the U.S. attorney's office in part, wasn't it?

Mr. Ross. In part. Yes.

Ms. **Soller**. The U.S. attorney's office informed you that the guidance counsellor at the school who was responsible for helping in part of the therapy had asked the U.S. attorney's office to pay for him to go to New York to try and sign a contract to write a book about the incident at Hopi, right?

Mr. Ross. Yes.

Ms. **Soller**. This was viewed by the U.S. Attorney's office, obviously, as inappropriate, right?

Mr. Ross. Definitely.

Ms. **Soller**. They informed you also, didn't they, that the guidance counsellor was conducting interviews and giving questionnaires to the students asking them about the details of the sexual abuse that were completely inappropriate?

Mr. Ross. Yes.

Ms. **Soller**. You were not aware of this before this was brought to your attention——

Mr. Ross. No; I was not.

Ms. **Soller** [continuing]. In December 1987. That individual you say was removed from Polacca, correct?

Mr. Ross. Yes, ma'am.

Ms. **Soller**. In fact, he was transferred down the road; isn't that correct?

Mr. Ross. He was reassigned to another school in the Hopi Agency.

Ms. **Soller**. The other school to which he was assigned was Keams Canyon?

Mr. Ross. Keams Cañyon.

Ms. **Soller**. That's a boarding school?

Mr. Ross. Yes, ma'am.

Ms. **Soller**. With children?

Mr. Ross. Yes.

Ms. **Soller**. Were you aware that at the time the allegations or the complaints against Mr. Cargile were raised that the suggestion was not only that he be removed from Polacca but that he be removed from contact with children?

Mr. Ross. In my instructions on the reassignment was the caveat that he not be permitted to counsel with any of the children that were impacted by the *Boone* case. That's one of the reasons he was moved completely from the Polacca community over to Keams Canyon.

Ms. **Soller**. Boone was at Polacca for 8 years, right?

Mr. Ross. That's my understanding. Yes.

Ms. SOLLER. Did you make any effort to determine whether or not any student at Keams Canyon had ever been a student of Mr. Boone's at Polacca?

Mr. ROSS. No; I did not.

Ms. SOLLER. So, in fact, he might have been in contact at Keams Canyon directly with students who had been impacted by Mr. Boone?

Mr. ROSS. The majority of the students on Hopi are day school students. All of the elementary schools on Hopi are K–6 systems. The new Hopi Junior-Senior High School was opened and the majority of, if not all of the students from the Polacca Day School would have attended this new school on a daily basis and would not have been residents in the Keams Canyon Boarding School dormitories.

Ms. SOLLER. But you did not determine whether or not——

Mr. ROSS. I cannot ascertain for a fact whether——

Senator MCCAIN. May I interrupt, Counselor, for a second?

Ms. SOLLER. Yes.

Senator MCCAIN. Counsel just asked you if you were aware that Mr. Cargile was giving questionnaires to students to fill out that had been victimized by Mr. Boone. Were you aware of this fact?

Mr. ROSS. I had heard that through the U.S. District Attorney's office.

Senator MCCAIN. Did you find that acceptable behavior?

Mr. ROSS. No.

Senator MCCAIN. Was Mr. Cargile disciplined?

Mr. ROSS. There was an investigation to find out whether or not he actually distributed questionnaires, and there was no physical evidence of a questionnaire. He does admit that he did have formulated specific questions in his own mind to ask those children, but to my knowledge we have not found a formal questionnaire.

Senator MCCAIN. Was it appropriate for him to go so far as to travel to New York to seek a contract to write a book?

Mr. ROSS. No.

Senator MCCAIN. That was inappropriate behavior?

Mr. ROSS. Yes, sir.

Senator MCCAIN. Was he disciplined for that?

Mr. ROSS. Not to my knowledge.

Senator MCCAIN. Who would be responsible for disciplining him?

Mr. ROSS. The initiating or proposing official would have been Mr. Lee Cargile's immediate supervisor, Mr. Ted Eastwood. The deciding official on any proposed administrative action would have been the Agency Superintendent for Education, Mr. Albert Sinquah.

Senator MCCAIN. Who in this case is?

Mr. ROSS. The Polacca Day School Principal, Mr. Ted Eastwood, as the proposing official and the Hopi Agency Superintendent of Education, Mr. Albert Sinquah, as the deciding official.

Senator MCCAIN. Who appeared to have a lot of problems of his own at the time?

Mr. ROSS. Yes.

Senator MCCAIN. Thank you, Mr. Chairman.

Ms. SOLLER. In fact, in December 1987, through these reports from outside sources you learned that Mr. Sinquah was completely unable to deal with the situation at Polacca; isn't that right?

Mr. ROSS. Yes; and at that juncture I made a decision to recommend his reassignment.

Ms. SOLLER. Had you been aware before December 1987 that he was not acting in a responsive manner?

Mr. ROSS. I had some suspicion to believe because of a different incident that did not have anything to do with child abuse.

Ms. SOLLER. Did you, in fact, because of your suspicions, in any way monitor him closely to make sure that he was adequately handling it?

Mr. ROSS. I began monitoring Mr. Sinquah quite a bit more than I would normally have, and as a result of that monitoring made the recommendation to the director for a reassignment.

Ms. SOLLER. This was in December after you had received notifications from an on-site team?

Mr. ROSS. The proposal was made in November or December, and he was actually reassigned the first of January.

Ms. SOLLER. In your opinion, when you transferred him it was because he was not able to deal with the problems of sexual abuse and how to resolve them; isn't that right?

Mr. ROSS. Yes.

Ms. SOLLER. In fact, when he was transferred he was transferred to the Gallup office as an education specialist; isn't that right?

Mr. ROSS. Yes; he was transferred to the Gallup office into a position which basically was responsible for assisting agencies in monitoring school activities toward school accreditation, developing effective school modeling, those areas.

Ms. SOLLER. One of the tasks that he had in his new position was the monitoring of the child protection teams; isn't that right?

Mr. ROSS. One of the assignments that he was assigned was in concert with Mr. Charles Johnson of the Fort Defiance Agency. Both those two gentlemen served on the Navajo Area Child Protection Team, primarily because there is no area education program administrator. That particular person was on an intergovernmental personnel assignment to the Navajo Tribe, and so for all intents and purposes that entire function was abolished.

Ms. SOLLER. So because there was a lack of personnel in the office, though, Mr. Sinquah was put in a position in his new job where he was dealing with child sex abuse issues?

Mr. ROSS. Yes.

Ms. SOLLER. Even though he had been transferred from Polacca because he couldn't deal with those issues; is that right?

Mr. ROSS. His initial transfer was one of a very personal nature, and on the reassignment he was dealing with—because of his association with the U.S. District attorney and the processes that we had to take and his knowledge of those processes and working relationship with the U.S. District Attorney, he was assigned, along with Mr. Johnson, to work on the child protection team.

Ms. SOLLER. But whatever reason you had, you knew there were allegations by the U.S. attorney's office and by consultants there and by other education specialists that he was just not able to deal with the issues of child sexual abuse, and that they had recommended his transfer for that reason and he was still reassigned to deal with these issues because of a personnel absence in your office?

Mr. Ross. In looking in retrospect it would probably have been a far better alternative had I assumed that direct function. That's looking at it after the fact.

Ms. SOLLER. Now, was Mr. Cargile, the counsellor that was transferred because of his inappropriate action at Polacca to Keams Canyon, monitored in any way that you know of to make sure that he was adequately dealing with counselling functions at Keams Canyon?

Mr. Ross. I have no specific information as to what type of monitoring was performed.

Ms. SOLLER. To your knowledge, the superintendents never went down there on unannounced visits to check on him?

Mr. Ross. Not to my knowledge.

Ms. SOLLER. You never sent anyone from your office down there, did you?

Mr. Ross. We did just recently.

Ms. SOLLER. But until the last week or so there were no unannounced visits; is that right?

Mr. Ross. Not to my knowledge, no.

Ms. SOLLER. In fact, the reason for the unannounced visits were because of further allegations against him; isn't that right?

Mr. Ross. Yes.

Ms. SOLLER. These allegations indicated that he was drunk on the job, right?

Mr. Ross. Yes.

Ms. SOLLER. That Keams Canyon was so out of control for lack of policies and supervision that experts in the area of child sexual abuse thought that it was a crisis waiting to happen, itself; isn't that right?

Mr. Ross. Yes.

Ms. SOLLER. These experts that, in part, brought this to your attention are the two therapists from Polacca; isn't that right?

Mr. Ross. Yes.

Ms. SOLLER. They said that they were afraid that if Keams Canyon was not rectified it might create another situation just like what had occurred at Polacca; isn't that right?

Mr. Ross. It was a possibility. Yes.

Ms. SOLLER. It wasn't until they brought that to your attention that you were aware that there was any problem at all with Mr. Cargile?

Mr. Ross. That report was not brought to me directly. As a matter of fact, I still don't have a copy of the report from the two individuals.

I did ask, when the business manager went out to do his investigation, as well as the team that was sent out within this last week or so, to obtain the documents from those two psychiatrists. My understanding was that they did, in fact, write reports, but that they were turned over to the child protection team of the agency.

Ms. SOLLER. But in retrospect the fact that a counsellor was moved for inappropriate behavior, is behavior you think inappropriate; isn't that right?

Mr. Ross. Yes.

Ms. Soller. Shouldn't that counsellor have been watched closely to make sure that he could function adequately in a situation where he was still counselling children?

Mr. Ross. Yes.

Ms. Soller. In fact, he was in a situation where he not only was counselling children, but he had responsibility for them, in part, in a setting where they were 24 hours a day; isn't that right?

Mr. Ross. Yes. I'd like to also stipulate that at the end of his year, after his reassignment to Keams Canyon, the Polacca School Board did take official action requesting his non-contract renewal. That was supported by the agency, and those documents were sent to Phoenix to the area personnel office.

Ms. Soller. What happened?

Mr. Ross. At that juncture they were directed that—they apparently did not follow prescribed procedures at the agency, which resulted in an order or directive to offer him a new contract for this current year.

Ms. Soller. So, in other words, because of technicalities, the Phoenix Office of Personnel ordered this counsellor to be rehired?

Mr. Ross. That's my understanding. Yes.

Ms. Soller. When you learned of that did you make any contact with the personnel office to tell them that this was an unusual circumstance that ought to be re-examined?

Mr. Ross. The Acting Agency Superintendent at that time did. I did talk to the Phoenix Area Personnel Officer trying to resolve that, and we still haven't resolved the issue.

Ms. Soller. In fact, have you heard that there is still not a stable administration at Polacca after two years?

Mr. Ross. It is my understanding that there are some allegations surrounding the new principal.

Ms. Soller. In fact, the allegation specifically is that the child abuse expert had offered to do training for the staff, and the principal failed to communicate this offer of training to the staff so that none of them came when it was offered?

Mr. Ross. That's my understanding.

Ms. Soller. Has any action been taken to correct her in her failure to provide for her staff this very important training opportunity?

Mr. Ross. Yes; the new agency superintendent has transmitted that information.

Ms. Soller. When Mr. Sinquah was transferred there was not an attempt to get a stable agency superintendent immediately, was there?

Mr. Ross. The advertisement and reappointment of a new permanent agency superintendent was impacted by a couple of issues: one, the new high school had just come under construction and was opening up that year. As a result, the entire position description had to be redescribed, and that process is done by the administrative side of the Bureau in terms of after we write out the new work load factors it is given to the classifiers who then reclassify it for grade level, and then approval for advertisement.

Ms. Soller. So for administrative reasons it took over a year to get a stable agency superintendent in place?

Mr. Ross. Yes.

Ms. Soller. In fact, there now is an agency superintendent there named John Wahnee; is that right?

Mr. Ross. Yes, ma'am.

Ms. Soller. Mr. Wahnee was previously the superintendent at Cherokee; isn't that right?

Mr. Ross. Yes; he was.

Ms. Soller. Now, are you aware that while Mr. Wahnee was at Cherokee there was a case of child sexual abuse reported and discovered? The case of Paul Price?

Mr. Ross. I learned of the case at Cherokee in January of this year.

Ms. Soller. Was that before or after Mr. Wahnee was hired?

Mr. Ross. After Mr. Wahnee was hired.

Ms. Soller. So when he was hired was there any effort that you know of made to determine whether or not this superintendent who was coming into Hopi had any special experience or expertise in the handling of child sex abuse cases?

Mr. Ross. Nothing specific. No.

Ms. Soller. So as far as you know, he wasn't even asked whether or not he was even familiar with the cases such as the *John Boone* case?

Mr. Ross. In the interview with the Hopi Board of Education there was limited discussion about child sex abuse.

Ms. Soller. Now, you were the Acting Director of Education in 1985, weren't you?

Mr. Ross. Up until about May, I believe, somewhere in there.

Ms. Soller. So you were in Washington in the Central BIA Education Office at the time that the *Price* case was brought to light; isn't that right?

Mr. Ross. Yes.

Ms. Soller. Did you ever hear about it?

Mr. Ross. No; I didn't.

Ms. Soller. When was the first time you heard about it?

Mr. Ross. The first time I heard about the *Price* case was when I talked with Mr. Wahnee. He indicated a case in Cherokee. He didn't refer to it as the *Price* case.

Ms. Soller. So even though you have been in education for all these years you did not ever learn about the case that was very similar to Boone that had happened 3 years before it, did you?

Mr. Ross. No, ma'am.

Ms. Soller. From your understanding, the Bureau's Office of Education made no effort after Price to implement any of the lessons it might have learned about background screening or reporting, did they?

Mr. Ross. There were no formal policies, procedures, or guidance instruments that came out to the field.

Ms. Soller. In fact, there wasn't anything informal in that you never heard about it, did you?

Mr. Ross. That's right.

Ms. Soller. The individuals whose names have come up in the aftermath of the *Boone* case—Mr. Goff, Mr. Cargile, Mr. Sinquah, Mr. Eastwood—has there been any disciplinary action taken against them in any way about their handling of situations?

Mr. Ross. No.

Ms. SOLLER. Has there been any administrative action taken involving them other than to transfer them or in the case of not renewing the contracts that you have mentioned?

Mr. Ross. There was one resignation, a reassignment of Mr. Sinquah, Mr. Goff did apply for a vacant position down at Papago and was selected off of a certificate.

But in terms of any adverse action, no, there has not been.

Ms. SOLLER. So there is nothing in any of these individuals' personnel files that would indicate that they acted inappropriately or inadequately in dealing with the situation at Polacca, is there?

Mr. Ross. No.

Ms. SOLLER. There was nothing that you knew of in Mr. Wahnee's file that indicated that there was some problem with the way he had handled the *Price* case, was there?

Mr. Ross. No.

Ms. SOLLER. So the Bureau on any level has not taken any action adverse to any of these individuals?

Mr. Ross. Not to my knowledge.

Ms. SOLLER. Ms. Brown, I just want to talk for 1 minute about some of the experiences you might have had in the supervision that the Bureau has had over some other reports of child sex abuse.

Specifically, there was a case at Choctaw; is that correct?

Ms. BROWN. Yes.

Ms. SOLLER. What was the local BIA Education Office's reaction in that case?

Ms. BROWN. I first heard about the case in February 1988.

Ms. SOLLER. What did you hear?

Ms. BROWN. That there was a big problem down there.

Ms. SOLLER. What, specifically?

Ms. BROWN. It was with one of the teachers. He had been put on administrative leave. There were allegations of sexual abuse with students, and the assistant director for that particular area contacted me and asked me to work with him to try to get something going on in because he felt that it was a volatile political situation and the people in the BIA and the other service providers were reluctant to move on the case.

Ms. SOLLER. What did you feel about the case when you heard about it?

Ms. BROWN. I felt he should be removed out of the system.

Ms. SOLLER. Was the local agency acting in an appropriate way, in your opinion?

Ms. BROWN. It was just at a standstill.

Ms. SOLLER. So what happened?

Ms. BROWN. So I was asked to organize a team to go down there to review the situation. One of the solicitors went with us, and a person from tribal services, and one other person.

Ms. SOLLER. Did the delay by the local office resulting any harm to any other children?

Ms. BROWN. By the time I got down there he had abused children again during the spring break, and so I felt rather livid and I wanted to move immediately to terminate him. I was not instructed, but it came up that maybe we should just put him on leave or do something minimal.

Ms. SOLLER. What happened?

Ms. BROWN. We removed him. And I was told that I didn't follow proper procedure when I did this, and actually I didn't, but I figured that I would rather do that and then deal, if the person wanted to sue us later, that we had to get this person out of the school for the protection of the children.

Senator MCCAIN. May I ask who it was that told you that they should either put him on leave or do something minimal?

Ms. BROWN. It was in the conversation of the group, because the people that were with us—I think there was some concern that we didn't violate any procedures.

Ms. SOLLER. There has also been a recent case at Shanto involving a dorm aide; isn't that right?

Ms. BROWN. Yes.

Ms. SOLLER. This dorm aide is alleged to have sexually abused children in the dormitory; isn't that right?

Ms. BROWN. That is correct.

Ms. SOLLER. This is at Shanto at Navajo, right?

Ms. BROWN. Western Navajo Agency.

Ms. SOLLER. That case is pending trial; isn't that correct?

Ms. BROWN. Yes.

Ms. SOLLER. This individual continues to work at the school, doesn't he?

Ms. BROWN. I believe he was reassigned as a maintenance person. I'm not sure what the status is.

Ms. SOLLER. But he is still a maintenance person on the grounds at the Shanto Boarding School?

Ms. BROWN. I think that is correct.

Ms. SOLLER. Are you aware of a case at Standing Rock involving an IHS social worker?

Ms. BROWN. Yes; I am.

Ms. SOLLER. There have been allegations of that individual, and he is under investigation for sexual abuse as well; isn't that right?

Ms. BROWN. Yes.

Ms. SOLLER. Has IHS, to your knowledge, taken any action to remove him from contact with children?

Ms. BROWN. No.

Ms. SOLLER. Is he still in contact with children?

Ms. BROWN. To my knowledge he is.

Ms. SOLLER. Now, are you aware of the case of J.D. Todd?

Ms. BROWN. Yes.

Ms. SOLLER. In that case, during the course of the proceedings isn't it true that the teachers, some of the co-workers of Mr. Todd, were going to go testify on his behalf?

Ms. BROWN. Yes.

Ms. SOLLER. What arrangements—and some of the children from the school were also going to go testify as victims; isn't that right?

Ms. BROWN. Yes.

Ms. SOLLER. What were the initial arrangements that the school administration made for the transport of the teachers and the students—witnesses who would be testifying on opposite sides of the case?

Ms. BROWN. To my knowledge our agency superintendent turned over the plans to the school principal, and then he went on annual leave and he had no idea that the school principal supported the perpetrator. I had gotten a call from the U.S. attorney's office saying this is a mess and asking what I could do to help.

I think I immediately went down and talked to Mr. Mehojah, and then he made some calls out to the field.

Ms. SOLLER. Mr. Ross, were you contacted?

Mr. ROSS. Yes; I was.

Ms. SOLLER. What happened?

Mr. ROSS. I made immediate contact with Mr. Benny Hale, who was the assistant agency superintendent for education and directed that someone from the agency office transport those children down for the trial proceedings and remain with them while they were there and then to bring them back rather than having the principal who, as I understood it, was going to be testifying on behalf of the teacher.

Ms. SOLLER. One last area. Mr. Mehojah, as far as you know has the Office of Indian Education Programs, after it has reported a case or been involved in reporting, ever taken any intervention in any case other than in the case at Choctaw?

Mr. MEHOJAH. Direct intervention?

Ms. SOLLER. Yes.

Mr. MEHOJAH. Other than Choctaw, no, I'm not aware of any.

Ms. SOLLER. Has there been any funding to any of the victims of any of the cases at the schools other than the *Todd* case at Greasewood and the *Polacca* case at Hopi?

Mr. MEHOJAH. We provided some funding, like you said, to Hopi, as well as to—we also provided some training to school boards at our conference in April. But other than that, and our seven training sessions that we have conducted, that has been it.

Ms. SOLLER. Has there ever been a case, even as recently as the Lukachukai case in the last month, where there have been allegations of abuse at a school that the BIA has ever immediately gone to the school to provide direct, comprehensive crisis intervention?

Mr. MEHOJAH. No.

Ms. SOLLER. Mr. Chairman, I have no further questions.

Senator DECONCINI. Thank you, Counsel.

Mr. Mehojah, you said with the exception of these two cases you cannot think of any case where disciplinary action was brought?

Mr. MEHOJAH. That's correct.

Senator DECONCINI. That's correct. And why do you think that's the circumstance? No complaints, no procedures for sexual abuse cases? What do you think lies behind the fact that no disciplinary action had been brought?

Mr. MEHOJAH. I think that in some cases the people had been transferred, and I think that has been looked on as more of a—even though it is an administrative action—disciplinary action.

Senator DECONCINI. Do you look on it that way?

Mr. MEHOJAH. No, sir; I do not. I think that since this has become known to us about the extent of the problem that we are facing that we will have to look at it in an entirely different way.

Senator DECONCINI. I would think so.

You talked about the review of these applicants—Form 171 and a short form and a new form S-17 or something, and a fingerprint form. Are you aware of what OPM does in its background investigation? Do you know what steps they take?

Mr. MEHOJAH. I know that they do contact the FBI and they work with them on the background checks. I know they also have in their computer a record of any employee that has had any problems in this area or any incidence of child or sexual abuse. I know that they do work with other law enforcement agencies—I'm not quite sure who they are.

One thing that we also do in this is that we will be contacting the state social service agency, and we have made those telephone numbers and addresses known to our people. We have sent those out to our field offices.

Senator DECONCINI. If the OPM contacts the FBI, do you know if the FBI shares with them or permits them to screen these people with the use of the fingerprints to find out if they are felons?

Mr. MEHOJAH. I am not sure exactly what they do. All I know is that the OPM does work with the FBI to try to ascertain if there is any problem.

Senator DECONCINI. Wouldn't you like to know what they do because you are certifying or permitting these people to go to work?

Mr. MEHOJAH. Yes, sir.

Senator DECONCINI. Do you have a policy that you go ahead and hire the people while they are being investigated? I presume that's because you need the people on the job?

Mr. MEHOJAH. That's correct.

Senator DECONCINI. Does that occur to you to not be a very wise policy, seeing the errors that have occurred?

Mr. MEHOJAH. Well, what we hope to do is by going through and checking their background—and each individual is checked personally by the hiring official—and also checking with the OPM people on their computer, that we will hopefully turn these people up. Also by checking with the State agencies.

Given the short amount of turn-around time that we hope to see from OPM, we hope to avoid the kind of problems we have had.

Senator DECONCINI. Do you have any reason to believe that Price Boone, Hester Todd, Bennally, Goodtrack, and Yazzie were checked out? Those are old cases, but do you know?

Mr. MEHOJAH. I do know that in some cases, like the *Hester* case, we should have caught. I know that in the *Bennally* case there was probably no way to catch that since the public school didn't have that in their file and didn't share that with us.

So in some of these cases we probably would not have caught them.

Senator DECONCINI. OPM would not have caught them?

Mr. MEHOJAH. That's probably true.

Senator DECONCINI. Mr. Ross, how about your experience? Are you familiar with any discipline that has ever been taken besides the couple of cases we discussed here?

Mr. ROSS. No; not that I am aware.

Senator DECONCINI. You have been in the BIA system for a long time. So you know of no discipline actions ever taken, including when you were in Arizona?

Mr. Ross. I have been in the Bureau for two separate tours, the latest one from 1980 to the present, and to my knowledge there has been no——

Senator DeConcini. Since 1980 you know of no disciplinary actions?

Mr. Ross. No.

Senator DeConcini. That is just astounding to this Senator that no disciplinary action—I want to believe that's because the cases weren't brought to your attention, and yet when some of them were, like the *Wahnee* case out there now, you wonder what is going to happen to that person.

Are you familiar with Roy Lambert, who was the assistant principal at the Cherokee Reservation? Have you ever heard any complaints about Mr. Lambert?

Mr. Ross. No.

Senator DeConcini. Have you?

Mr. Mehojah. No, sir.

Senator DeConcini. We had testimony here this morning from the mother of a victim who said, among other things,

> Roy Lambert, who is the assistant principal, treated my son and me both as if we had pre-fabricated the story against Mr. Price. Mr. Lambert told me that Mr. Price was an innocent man, and that John

That's her son, the victim——

> had fabricated the whole story. The day Paul Price plead guilty I went to the school to see Mr. Roy Lambert. I felt like I deserved an apology and I asked him to give me one. He let me know real quick he did not owe me anything and that Mr. Price was still innocent.

Do you think that case is worth looking into—Mr. Lambert's conduct?

Mr. Ross. Yes.

Senator DeConcini. Thank you.

Now, I believe, Mr. Mehojah, you indicated that the policy is that teachers must make a report if there is any complaint; is that right?

Mr. Mehojah. That's right.

Senator DeConcini. Do you have any type of procedure to see whether or not they do make reports?

Mr. Mehojah. We have to rely on the principal or other supervisors at the school to make sure that a report is filed. We expect that any person who is in the education program at the school level would file a report, whether they be a teacher or a maintenance person or a cook or a janitor.

Senator DeConcini. Do you think it would be worthwhile setting up a hotline of some kind for all teachers in BIA schools that they could call an 800 number and make a report, themselves?

Mr. Mehojah. That would be worth looking into. Yes, sir.

Senator DeConcini. We had testimony this morning where reports were made to nurses and to principals and obviously no report was sent to your office. That really is disturbing, and I would hope that for the interim period here you would institute something that would make it available to anybody who wanted to pick up the phone and make a report so that there would be some follow-up, not just to the supervisor or the principal or the nurse, who we have instances here that just literally ignored it for years. Senator McCain.

Senator McCain. Thank you, Mr. Chairman.

I'd like to review with the three witnesses what I have learned and what I think this committee has learned in the past couple of days. I know we have more on this subject, but I have always been incredibly puzzled and intensely curious as to why it took so long to apprehend many of these pedophiles. It was 14 years in the case of Mr. Price on the Cherokee Reservation; 9 years in the case of Mr. Boone; years in other cases that I can cite you.

The reason why I say that is because we are all aware that incidents of child molestation take place off Indian reservations. We know that. Unfortunately it is a tragic aspect of our society today. But I know of no cases off reservations where someone can go for 14 years molesting children, or 8 or 9 years in the case of Mr. Boone.

Part of the answer is that there are no uniform reporting procedures that I know of, as earlier witnesses have testified. There is no crisis intervention once these incidents are brought to light—certainly not immediate, as there would be in an off-reservation situation. There is no discipline of people who have displayed incompetence, at best, and in some cases complicity with those who are guilty of this—for example, the principal who told the mothers when they came to see him, "What do you want to do, hurt this guy's reputation?" And we hear case after case, such as the orchestrating of students to come down and testify on behalf of a perpetrator of this kind of activity. No cooperation with the FBI. Our FBI witness told us that they have an incredibly difficult time when they go to the schools to get any kind of cooperation.

Then, of course, the answer seems to be, Mr. Ross, that once we find that there are people who are culpable or negligent then they are transferred rather than disciplined.

All of these circumstances leads me to more clearly understand why we have these long-term pedophiles going without apprehension, and it is beyond me, frankly, why these people are not disciplined.

I guess my first question to you, Mr. Ross, is: who is responsible for disciplining these people if there are allegations brought against them for not performing their functions correctly? Is it your responsibility? Is it the Assistant Secretary's responsibility? Is it Senator DeConcini's responsibility? Who is responsible?

Mr. Ross. The immediate supervisor, under our personnel system, is the one that proposes the action.

Senator McCain. Are you concerned that it appears that in many of these cases the immediate supervisor did nothing besides transfer the individual?

Mr. Ross. No.

Senator McCain. So then whose responsibility is it then when the immediate supervisor doesn't take care of the problem?

Mr. Ross. Then the next line supervisor, and I have taken action, at least recently, since there was no action at the lower level of the bureaucracy.

Senator McCAIN. Have you instructed the schools under your area of responsibility to cooperate with FBI agents in the event of the investigation of an allegation of child molestation?

Mr. ROSS. Yes; I have. And, as a matter of fact, we had a meeting of all of the principals of the BIA and all of the agency superintendents and area education program administrators, at which meeting FBI Agent Small did explain the process. At that particular meeting in Denver all of the principals in the Bureau were advised that they were to cooperate fully with the FBI on their investigations.

Subsequent to that we have had five community hearings: one at Kayenta in concert with the public schools; one at Tuba City in concert with the public schools there; one at Window Rock, AZ, in concert with public schools, IHS, U.S. attorney's office, FBI solicitor; and then just recently two additional community awareness meetings, one at Farmington, NM, for the Shiprock Agency, and one at Red Rock State Park for Eastern Navajo Agency.

Senator McCAIN. Have you or Mr. Mehojah or Ms. Brown recommended a policy that calls for immediate crisis intervention to initiate counselling and help for these victims of these crimes?

Mr. ROSS. Nothing in writing at this point. I have several recommendations that I have pulled together as a result of my interaction on the depositions that I'm looking at to try to strengthen the system that we have, but none specifically on that issue.

Mr. MEHOJAH. As far as crisis intervention and going in after an incident occurs, is that your question, sir?

Senator McCAIN. Yes.

Mr. MEHOJAH. We have discussed it, but nothing has occurred yet.

Mr. ROSS. Senator, let me also indicate that the U.S. Justice Department's office, and the Victim Witness coordinator has been reluctant to turn over the names of students that have been abused for immediate intervention for fear that the services provided would be construed within the legal process as an admittance and would impact on the legal proceedings.

We did receive information from Jan Emmerich that she would be willing to provide some names if there were competent, certified intervention specialists.

Senator McCAIN. Mr. Ross, do you also tell teachers to interview the student victims?

Mr. ROSS. No.

Senator McCAIN. Have you told them not to?

Mr. ROSS. No; basically what we have said is that if there is an allegation of child abuse, try to get as much specific information as possible.

Senator McCAIN. Mr. Mehojah, do we not need a lot more counsellors and funds for these kinds of situations?

Mr. MEHOJAH. I think that we, in my opinion, sir, need to look on this in a very comprehensive way. I think not only in the short term, which is very important, as you point out, for crisis intervention, but also in the long term for communities, parents, of course the children, because this is a long-term problem once it happens. We have discussed with IHS what kind of involvement they would play with the Bureau, and I think that is something that needs to be worked on and developed jointly together, along with the tribes and other agencies that serve Indian people.

Senator McCAIN. It serves no purpose for me or anyone else to get angry, but I have never seen a more clear failure of the Government's responsibility to a group of American citizens than the stories we have heard in the last few days, and the most tragic aspect of it is that they are little children.

Senator DECONCINI. Thank you for your testimony.

The committee will stand in recess until 10 a.m. tomorrow morning.

[Whereupon, at 5:21 p.m. the hearing was adjourned, scheduled to reconvene at 10 a.m. on Wednesday, February 22, 1989.]

SEXUAL ABUSE OF INDIAN CHILDREN

WEDNESDAY, FEBRUARY 22, 1989

U.S. Senate,
Select Committee on Indian Affairs,
Special Committee on Investigations,
Washington, DC.

The committee met, pursuant to recess, at 10:09 a.m., in room 216, Hart Senate Office Building, Hon. Dennis DeConcini (chairman of the committee) presiding.

Present: Senators DeConcini and Daschle.

Staff present: Michael J. Anderson, Kenneth Ballen, Mary Lou Soller, Dan Lewis, Mary Ellen Fleck, and Kathy Momot.

Senator DeConcini. The special committee will come to order.

This morning the special committee will continue the hearings on the child sexual abuse problem which is most disturbing from the information we had yesterday and also I think the information that will be received today.

Our first witnesses will be Larry and Anne Blythe. Mr. Blythe, you were here yesterday. Would you please come forward?

[Witnesses sworn.]

Senator DeConcini. Thank you.

Mr. Anderson.

STATEMENT OF LARRY AND ANNE BLYTHE, PARENTS OF SEXUAL ABUSE VICTIMS, CHEROKEE, NC

Mr. Anderson. Good morning, Mr. and Mrs. Blythe.

Mr. Blythe, would you state your name and your current place of employment for the record, please?

Mr. Blythe. My name is Larry Blythe. I work with the Bureau of Indian Affairs in Cherokee, NC.

Mr. Anderson. You're also a tribal council member of the Cherokee Tribe; is that correct?

Mr. Blythe. Yes; I'm on the tribal council.

Mr. Anderson. Mr. Blythe, before we address the topics of parents' groups which we'll address this morning with your testimony, I want to ask you a follow-up question from yesterday.

A teacher at the Cherokee elementary school, Betty Brintnall, testified that she attended a meeting where Mr. Maldonado had made a speech to the teachers about slander shortly after Dr. Justice had given them information concerning Mr. Price's history of pedophilia. Are you aware of that testimony?

Mr. Blythe. No; I wasn't here for that testimony.

Mr. Anderson. But you're aware that the speech did, in fact, take place?

Mr. BLYTHE. Yes.

Mr. ANDERSON. Do you have some information on where Mr. Maldonado is today?

Mr. BLYTHE. Last time I talked to Ray, he was the superintendent at Hoquaim Agency in Washington State.

Mr. ANDERSON. Is that considered a promotion for Mr. Maldonado?

Mr. BLYTHE. At Cherokee, Mr. Maldonado was the administrative officer, so I'm sure it would be a promotion.

Mr. ANDERSON. All right. So, in fact, then, none of Mr. Maldonado's actions, particularly the speech about slander, would be considered a detriment to his career while at the BIA; would it?

Mr. BLYTHE. That's correct. The first I heard of it was yesterday.

Mr. ANDERSON. All right, thank you.

Mr. Blythe, your two children were molested by a pedophile; is that correct?

Mr. BLYTHE. That's correct, yes.

Mr. ANDERSON. What ages were they when they were molested by this person?

Mr. BLYTHE. My daughter Laura was 2; my son Sam was 6.

Mr. ANDERSON. Were these two different persons who molested your children?

Mr. BLYTHE. Yes.

Mr. ANDERSON. These molestations occurred at different times; is that correct?

Mr. BLYTHE. Yes.

Mr. ANDERSON. Did your children contract venereal diseases after their contact with the pedophile?

Mr. BLYTHE. Yes; my son contracted gonorrhea; my daughter chlamydia.

Mr. ANDERSON. Mr. Blythe, after those incidents with your children, you found out that other than the Federal Government networks, there was a need for parent support as well; is that correct?

Mr. BLYTHE. That's correct.

Mr. ANDERSON. I'd like to have you follow that up, Mrs. Blythe. Why is there a need for parents' groups in this area? Why is there a need for groups other than Federal Government types of agencies and social service agencies in this area?

Mrs. BLYTHE. The main reason why we formed the group was because there are such deficiencies in the laws, social services, law enforcement, medical services, education to parents, communities, and teachers. There's a large deficiency in the overall investigations. That's why we formed the group.

Mr. ANDERSON. When did you form this group?

Mrs. BLYTHE. We formed it in November 1987.

Mr. ANDERSON. How many are in your group?

Mrs. BLYTHE. It varies. There's approximately 25 total, but they don't all come to every meeting.

Mr. ANDERSON. Are you the founder of the group?

Mrs. BLYTHE. Yes; and I'm the chairman of the group.

Mr. ANDERSON. Do you get calls from parents across the reservation about this group and this type of service?

Mrs. BLYTHE. I get them on a regular basis, yes.

Mr. ANDERSON. You provide support, not treatment; is that correct?

Mrs. BLYTHE. That's right. Normally a person will call and they'll say, "I've tried to contact this agency. I can't get them. What do I do?"

Mr. ANDERSON. What other type of services do you provide to the parents?

Mrs. BLYTHE. Education, moral support, and assistance in placing calls for them to the proper agencies.

Mr. ANDERSON. Mrs. Blythe, you mentioned that there were deficiencies which the parents' group had hoped to remedy. What are some of those deficiencies?

Mrs. BLYTHE. For example, on the reservation, if you don't take the proper steps, then it's almost jealousy. They won't take the steps with you because you didn't go to the proper authority first.

Another problem is in the investigation part of it. You have one person who investigates today, one person tomorrow, another and another on down the line. Well, in between the times of these investigations, the perpetrator can get to the victim and the victim's story changes here.

Mr. ANDERSON. Are you speaking from your own experience with your own children?

Mrs. BLYTHE. Yes; I am.

Mr. ANDERSON. Did that occur in both cases?

Mrs. BLYTHE. Yes; it did.

Mr. ANDERSON. The children were interviewed many times by different people?

Mrs. BLYTHE. Right, many times.

Mr. ANDERSON. What type of effect did that have on your children?

Mrs. BLYTHE. It would seem like we would just get them settled down from one and then all of a sudden someone calls and says, "We need to interview your child again." Then here we go again, they're all upset. Their grades dropped. They had erratic behavior.

Mr. ANDERSON. How did you perceive the training of the persons who questioned your children about the incidents?

Mrs. BLYTHE. I knew more about it than many of them did, and I knew very little at the time.

Mr. ANDERSON. Were they sensitive to the children when they questioned them?

Mrs. BLYTHE. Some were; some were not.

Mr. ANDERSON. When you say "some were not," what do you mean by that?

Mrs. BLYTHE. They had no rapport with the children. They questioned them as adults and you can't question children as adults. I don't know how else to word it.

Mr. ANDERSON. Did you also have some dealings with the Indian Health Service in this area as well?

Mrs. BLYTHE. Yes; there's no one there to examine our children. For example, our daughter, we took her to the hospital four times and they said there were no signs of abuse. All this time she had chlamydia, and she was not tested for that.

We don't have a licensed child examiner at our hospital. So we finally took her off the reservation to a private physician who detected the chlamydia.

Mr. **Anderson**. How old was your daughter at the time that she contracted the chlamydia?

Mrs. **Blythe**. She was 2 years old.

Mr. **Anderson**. What was the length of time between your first visit to the Indian Health Service and the actual diagnosis of the venereal disease?

Mrs. **Blythe**. About 6 months. We took her four times within a 6-month period.

Mr. **Anderson**. All right.

Mrs. **Blythe**. The other problem that we had with the Health Service also is that we're having to use our contract health money for treatment. At the end of the year we usually run out of contract health money, and then it's just too bad, you don't get treatment.

Mr. **Anderson**. Mr. Blythe, with regard to the cases with which you are familiar through your own children's experiences, what is your perception of the training of the CFR judges at the Cherokee Reservation?

Mr. **Blythe**. Mike, funding and training of the judges are the biggest questions with the CFR court that we have. During this past tribal council, we appointed a new chief magistrate. We looked at trying to find a retired judge, a retired lawyer, someone with a background in law, who could actually deal with cases on the merits.

The funding problem arose because the judges want pretty good compensation for coming to Cherokee. Without proper funding, it limited us to selecting from among non-qualified people, you might say, as far as law degrees and any other background in law.

Mr. **Anderson**. Do you think your parents' groups will continue to fill a role at the Cherokee Tribe? Do you continue to see more and more cases of parents needing your assistance?

Mr. **Blythe**. Yes; I do. A lot of people are not able to accept what has happened to them or their children. The more that we are known there, the more people are coming to us, asking us, "what should I do," just for help.

Mr. **Anderson**. Are you speaking from your own experiences in terms of the acceptance of the event, with coming to grips with becoming parents of a victim.

Mr. **Blythe**. Yes.

Mr. **Anderson**. Prior to your group, were there any other informal networks of people to turn to in cases like this?

Mr. **Blythe**. Not of which we're aware. We fought the system for two years to get our first court case. I say the "system." We did not know to whom to turn. We did not know to whom to go. Luckily, we had Betty Shiek, a good doctor at the hospital, Dr. Granning. It may not have been the proper channels that we took, but we relied on their advice, you might say, as far as the steps we needed to take.

Mr. **Anderson**. Now you're available to parents; is that right?

Mr. **Blythe**. Yes.

Mr. **Anderson**. You mentioned that you fought the system. I think you're referring to the jurisdictional problem? Has that problem been fixed in terms of fighting the system?

Mr. **Blythe**. Yes, both of our cases were heard in Federal court. They were tried under the Assimilated Crimes Act, major crimes act. Jurisdiction arose out of those cases. Both times the perpetrators were convicted. In my son's case, a life sentence was given. In my daughter's case, two life sentences were given.

In my daughter's case, the Fourth Circuit Court of Appeals, ruled that under the reasoning of the Assimilated Crimes Act, the North Carolina statute, did not apply. The Federal Government had no law against molestation of minors or sexual abuse of minors.

Mr. **Anderson**. That problem has now been corrected; is that correct?

Mr. **Blythe**. That problem has been corrected. In 1986 the Congress passed an amendment to the Major Crimes Act which I want to commend the Congress and the Senate for doing.

My concern with that at this point is there may be other things in the Major Crimes Act that aren't covered that have not gone to court yet. The courts have not tested them. It may not even be in the area of sexual abuse; I don't know.

I would request that a law be passed to make the Assimilated Crimes Act, Title XVIII, U.S. Code Section 13, applicable to all crimes occurring in Indian country by Indians versus Indians that are not covered by tribal court law, tribal council law, or a Federal statute.

I think by doing this you're going to close those loopholes that may help some other family in the future.

Mr. **Anderson**. With regard to the therapy that your children now are receiving, has that been acceptable to you? Who's paid for that type of service?

Mr. **Blythe**. Luckily, I do have insurance. IHS will pay whatever the deductible is and then my insurance is picking up the rest.

The quality of the service is excellent. We have no complaints with that whatsoever.

Mr. **Anderson**. All right. I have no further questions, Mr. Chairman.

Senator **DeConcini**. Thank you very much, Mr. Anderson.

Mrs. Blythe, you said that your daughter and son were questioned numerous times by various people. I presume that includes law enforcement people?

Mrs. **Blythe**. Yes.

Senator **DeConcini**. Did that include the FBI?

Mrs. **Blythe**. Yes.

Senator **DeConcini**. The FBI testified here yesterday that multiple questioning is a real problem on Indian reservations because of the remoteness of where the people live relative to the schools. We heard that when a school requires that the parents be present to interview the child, that that hampers law enforcement a great deal. In fact, we heard testimony yesterday that they would interview and then the school would re-interview the child and the person might withdraw the complaint; then the FBI would go back and conduct the interview again.

What are your feelings? In your judgment, should the FBI, and other law enforcement be able to interview the child without the parents there?

Mrs. BLYTHE. I would not want my child interviewed without me there.

Senator DECONCINI. Without you there?

Mrs. BLYTHE. No; I would not.

Senator DECONCINI. Does that make any difference what age the child would be?

Mrs. BLYTHE. No.

Senator DECONCINI. Mr. Blythe, in your situation with your family, both the perpetrators received stiff penalties. I take it you concur that life sentence is a pretty stiff penalty.

You made some very good recommendations that I appreciate on the laws that ought to be applicable. Those recommendations, if those laws were applicable today, would that have affected your children's cases?

Mr. BLYTHE. Yes; they would, Senator.

Senator DECONCINI. Which way? Can you explain that, please?

Mr. BLYTHE. The sentences I referred to were when they were first tried in 1986, I think. The two life sentences, after the Fourth Circuit overruled those, they were not within the jurisdiction of the Federal court system. The U.S. attorney's office went back under the rape statute in my daughter's case, and the boy got 15 years. In my son's case, there was no law against it.

Senator DECONCINI. I see.

Mr. BLYTHE. The law does not say that a boy can be raped.

He was reindicted last week for assault.

Senator DECONCINI. So that's the distinction. Thank you.

Mr. BLYTHE. Yes.

Senator DECONCINI. I can agree completely.

We have no further questions. Thank you.

Mr. BLYTHE. Thank you.

Senator DECONCINI. Let the record show that Cochairman McCain will be with us shortly. He suggested that we go ahead and proceed this morning. He has an important meeting, I think, with the Armed Services Committee.

Our next panel will be Dr. Eidell Wasserman, Director, Special Child Sexual Abuse Project; Kenneth Hodder and David Breault, consultants to the Hopi Guidance Center. and Ms. Elizabeth Shiek.

Would you please raise your right hands? I think you were already sworn in, Ms. Shiek.

[Witnesses sworn.]

Senator DECONCINI. Please be seated.

Mr. Anderson.

STATEMENT OF ELIZABETH SHIEK, DIRECTOR/STAFF CLINICIAN, SMOKEY MOUNTAIN MENTAL HEALTH CLINIC, BRYSON CITY, NC

Mr. ANDERSON. I'll begin with you, Ms. Shiek.

Could you please state briefly your background and what you do at the Smokey Mountain Mental Health Clinic?

Ms. SHIEK. Yes; I'm a masters level psychologist in clinical and school. I have been working in the field of community mental health, with primary interest in children and youth, since 1975.

Mr. ANDERSON. All right. We heard Mr. Price testify yesterday in a videotaped deposition that he didn't think that fondling hurt anyone, at least at the time he committed the crime. We know now that that's not true.

I'd like to show, through your testimony, what impacts that does have on children. I think one way we can do that is through some of your experiences with children who have not disclosed the behavior or the molestation to their parents or to others.

There are some signs that are out there that children have been molested before they tell their parents; is that correct?

Ms. SHIEK. That is correct.

Mr. ANDERSON. Can you describe some of these pre-disclosure signals?

Ms. SHIEK. Do you want me to use the pictures as I go or would you like me to give you a list?

Mr. ANDERSON. Let's do both, and let's start with the pictures.

Ms. SHIEK. Well, I think, for instance, in this particular photograph which was done by a young female, she was brought to me because there had been some concern that something may have happened. There was no identification as to just exactly what.

If you will notice, there is a lot of grotesqueness there. There's a lack of symmetry, and so on and so forth, plus a definite markation in the genital area indicating there's some preoccupation with that particular area for that child.

The largeness of the one figure versus the smallness of the other figure would indicate that there's an overpoweringness of an individual over this particular child.

Mr. ANDERSON. How old is the child that drew this?

Ms. SHIEK. That child, I believe, at that time was 6 years old. It also indicates that this child was having some emotional difficulties with it because that picture is much developmentally delayed for that child. It's immature for a 6-year-old.

Mr. ANDERSON. Is that a 6-year-old that's on the Cherokee Reservation?

Ms. SHIEK. Yes; it is.

Mr. ANDERSON. Was that child molested by someone on the reservation?

Ms. SHIEK. Yes.

Mr. ANDERSON. Let's go to the next picture.

Ms. Shiek, if you would also describe how you came to get these pictures and whether the children drew them as part of their therapy or treatment.

Ms. SHIEK. Let me start with the fact that some of the children that I begin treatment with, it begins that there is some concern or the child may have said something that implies that maybe sexual abuse or molestation has occurred, but that they have not come forth with any type of concrete evidence. The children are referred to me for continued ability to disclose. I offer them opportunities in a more secure environment to do so.

This particular picture was done by a male, 6 years old. We knew that the child had been sexually abused because he had been observed doing sexual activities on his peers, but we did not have the full detail.

You'll notice here that this child feels as if he's abandoned. He's on a boat by himself. He even chooses not to be seen in the picture with "Please help me." This would indicate, not uncommonly, that a child doesn't know what to do once this has happened. They do feel isolated; they feel depressed; they feel different; they feel abandoned.

Mr. ANDERSON. You testified yesterday that you receive 30 to 40 reports of sexual abuse from the Cherokee Reservation per year; is that correct?

Ms. SHIEK. Yes.

Mr. ANDERSON. Would that include, as Mr. Blythe testified a moment ago, cases with venereal disease and other circumstances like that?

Ms. SHIEK. Absolutely.

Mr. ANDERSON. What type of numbers would there be for those types of incidents?

Ms. SHIEK. We have had about five children in the past 2 years that have contracted some form of venereal disease.

Mr. ANDERSON. Because of the molestation?

Ms. SHIEK. Direct rape or some oral, anal, or vaginal rape.

Mr. ANDERSON. How old were these children?

Ms. SHIEK. Anywhere from the age of 2 to 7.

Mr. ANDERSON. Let's go to the next picture. Would you describe what we're seeing here?

Ms. SHIEK. This child is one that actually I'm currently seeing. This child has not disclosed what has happened. As you can see, there's a tremendous amount of anger in this particular picture. I wish it was in color because certainly the color would have been much more graphic.

This child has been very explicit about the fact that there's some sexual preoccupation with the figure on the right a very clear indication of penis and testicles.

That particular picture is red in the original form and blood is emitting from the penis. You'll notice also that there's a very phallic-type symbol in the hand, indicating the desire for this child to kill the person who is on its left who is the perpetrator.

The bond here is very close. The child is in a tremendous amount of confusion because the person that offended him was a brother. There's a lot of love and hate here. The child is very depressed, extremely angry. He is exhibiting signs of uncontrollable behavior in the classroom. He's having to be watched and supervised very carefully because of the homicidal and suicidal ideations that this child is exhibiting at this time.

Mr. ANDERSON. Do you believe there is a need for the teachers to have training to identify this type of predisclosure behavior?

Ms. SHIEK. Absolutely. This child and many, many others are showing within the classroom these behaviors. Generally some type of abrupt change occurs—withdrawal, isolation, aggressive acting out toward other children, acting out sexual behaviors or knowledge of inappropriate sexual behavior. This often comes out in the classroom.

Mr. **Anderson**. Do you know whether the teachers at the Cherokee Elementary School receive this type of training to identify these types of characteristics?

Ms. **Shiek**. I know that they have had at least one in-service training that my agency provided for them. I don't know beyond that whether or not they continued with any type of training in the system.

Mr. **Anderson**. As a result of that training, were there any reports forwarded to you concerning this type of behavior?

Ms. **Shiek**. Not from the schools directly. The referrals have come primarily through the Department of Social Services or through the hospital or law enforcement.

Mr. **Anderson**. What does this picture describe?

Ms. **Shiek**. This picture shows again a lot of indication of sexual preoccupation. You'll notice that the penis again has been emphasized.

This child shows the feelings of isolation and entrapment. This child also has not been able to come forth with complete disclosures as to exactly how all these events other than "I've been hurt and need some help."

Again, you'll notice this child has some very aggressive tendencies. There's an object again on the right hand side of the picture indicating, I believe he called that "an axe" and there's a gun. This is not as clear because it's not in color, but there's also even a further containment that didn't come out in the enlargement to further contain the feeling of isolation and depression–of this child as well as anger and rage.

Mr. **Anderson**. You testified yesterday about the multi-generational effect that's here. Would a child that's showing these types of characteristics through a picture like this be likely to show those types of characteristics later?

Ms. **Shiek**. Absolutely. As a matter of fact, this child and the previous picture come from a family in which there has been already two or three reported sexual abuse instances, and this child has been removed as a result of that.

Mr. **Anderson**. Thank you. The last picture? How old was the child?

Ms. **Shiek**. The child was 7. Obviously, a child here with a lot of intellectual capabilities in understanding of family dynamics. This picture is particularly interesting because it indicates that the home environment is dangerous. If you'll notice, there's a little sign at the bottom "Danger" by the house.

Then the little figure on the right is the little boy with a gun, an object there in his hand for safety purposes. He has isolated himself from the family situation.

This was in an effort to get the child to describe how he felt about home. Actually, it wasn't home for this child, but where he had been molested.

You'll notice there's a snake on top of the dresser there, also indicating a lot of anger as well as sexual preoccupation.

Mr. **Anderson**. All right, thank you, Ms. Shiek. That leads naturally into the problems of treatment and the issues concerned with treatment after disclosure is made.

To begin the questioning on that issue, I'll turn to Special Counsel Mary Lou Soller.

STATEMENT OF DR. EIDELL WASSERMAN, DIRECTOR, SPECIAL CHILD SEXUAL ABUSE PROJECT, HOPI INDIAN RESERVATION, SECOND MESA, AZ

Ms. **Soller**. Dr. Wasserman, from your experience, what kind of therapy would be appropriate or needed by children who demonstrate their feelings in this way?

Dr. **Wasserman**. The kinds of traditional forms of therapy, particularly for, say, incest victims would include individual as well as group therapy on at least a weekly basis. In incest families, that would also include the parents, siblings, and other people that would be involved. On reservations that could include a large number of extended family members as well.

Even in non-incestuous situations, individual and group therapy and usually family therapy, again on at least a weekly basis, would be the traditional approach.

Ms. **Soller**. At the Hopi Reservation now, how many children are you able to provide with such therapy?

Dr. **Wasserman**. With that kind of therapy, none.

Ms. **Soller**. How many children do you think are in need of that therapy right now?

Dr.. **Wasserman**. We currently have about 19 children and their families in some therapy and we have a waiting list of over 30. That comes close to 50.

Ms. **Soller**. With the children that you are providing some therapy for now, what kind of therapy are you able to give them?

Dr. **Wasserman**. Most of the kids get either individual or family therapy or some mix of both. Some of the parents that are involved in the parent support group get support and therapy through those groups.

STATEMENT OF KENNETH HODDER AND DAVID BREAULT, CLINICAL SOCIAL WORKERS AND CONSULTANTS TO THE HOPI GUIDANCE CENTER, HOPI HIGH SCHOOL AND POLACCA DAY SCHOOL, HOPI INDIAN RESERVATION, AZ

Ms. **Soller**. Mr. Hodder and Mr. Breault, in addition to the kind of individual therapy that Dr. Wasserman has mentioned, what else do you think would be appropriate in this case?

Mr. **Hodder**. At the University of New Mexico, where I am employed, the kinds of services that we would provide typically for these kinds of cases would include supportive therapy for the mothers, the family members, in addition to group therapy for the victim, should it be a female or a male, and, in fact, in some cases services are provided for the perpetrator if the perpetrator is a family member. In incest cases, we have referral to evaluation and treatment programs as possibilities.

In these kinds of cases multiple services are usually indicated.

Ms. **Soller**. Now you and Mr. Breault are currently providing some services at the Hopi Reservation; is that right?

Mr. **Hodder**. Yes.

Ms. Soller. In addition to Dr. Wasserman and the two of you, what services are available out there?

Mr. Hodder. Well, there really are no services other than the parent support group, some of whom have been testifying before you previously.

Ms. Soller. How often are you two able to go out to the Hopi Reservation?

Mr. Hodder. We're only able to be there every other week.

Ms. Soller. For how many days?

Mr. Hodder. For just 2 days.

Ms. Soller. So only a total of 4 days out of the month?

Mr. Hodder. Exactly.

Ms. Soller. Are you able, supplementing Dr. Wasserman, to meet the needs of the victims at Hopi?

Mr. Hodder. Not at all. In fact, it's somewhat of a dilemma as a professional to be involved in a situation where you know that you're providing insufficient services. It's a real dilemma.

If we weren't there, there would really be nothing. That's why we continue to go, and that's part of why we're here.

Mr. Breault. If I might add one aspect that's terribly important in these cases, that is the capacity to provide crisis intervention and to be able to change the intensity of therapy quickly if need be. We absolutely do not have that capacity at Hopi.

When children disclose about sexual abuse, they become very fragile and their entire family structure becomes very fragile at that time. They have many somatic symptoms, bodily complaints. They have terrible nightmares frequently.

Parents feel terribly shocked themselves, need a great deal of support. This is when kids are high risk for becoming suicidal, becoming very aggressive, and so forth. They need tremendous contact, nurturing, and so forth.

They may need several sessions in 1 week. There may need to be several different types of sessions—for parents, for children, separately and together, and so forth, to provide a feeling of safety for these children at this time.

We are just crippled at Hopi. We cannot provide this kind of service.

Ms. Soller. Is there any difficulty in the provision of services if there is a long delay between the time that a case first comes to light and the time that services are available?

Mr. Breault. Oh, yes, because children just build up more and more defenses to try to protect themselves and to cover up their pain in more and more indirect ways. They try to push it deeper and deeper, and then try to handle that pain by maybe acting out more in different ways.

They're still crying out for help, but it becomes less and less direct in the ways they're able to do it. So it's very important to get to these kids quickly.

Dr. Wasserman. There may also be denial in the family or, if it's an incestuous situation, the perpetrator or relatives of the perpetrator may put pressure on the victim to recant or to just shut up about it and forget about it. All of those things really interfere with the potential for progress in therapy.

Ms. **Soller**. Dr. Wasserman, is there a difference in treatment between a victim, say, of an incest case and a victim, say, of John Boone?

Dr. **Wasserman**. There may be differences in what actually happens in the therapy, the need for immediate intervention, the need for provision of services, possibly crisis intervention services, at various points in time for family involvement—those kinds of things stay the same.

Mr. **Hodder**. There is a significant difference on the reservations because the family member perpetrator has a strong attachment to that particular community and may be both protected by people within the community from prosecution or from the impact of his or her actions. That indicates another need which is for more effective treatment locally and I think regionally for perpetrators who will be in many cases returning to the communities.

Ms. **Soller**. Dr. Wasserman, are you seeing any of the young children who are identified as victims of John Boone now coming back through the system as offenders?

Dr. **Wasserman**. We're seeing a tremendous increase in the number of adolescent offenders. All of the adolescent offenders I believe that we're aware of at the current time were sexual abuse victims themselves, and some of those were victims of John Boone.

Ms. **Soller**. Do you have a separate program for them?

Dr. **Wasserman**. We have no ability to provide a separate program for offenders. There is in the State of Arizona one in-patient facility for adolescent offenders in Phoenix. That program costs $450 a day. Their recommended stay is between 4 to 8 weeks. We don't have the funding—we have no funding through our program to pay for that.

Right now there is a situation that maybe Dave can talk about where that's preventing somebody from getting treatment, because neither IHS nor Tribal Social Services has the money available.

Mr. **Breault**. We've been trying to work with a young man who came to our attention last spring who has very violently abused a boy much younger than himself and also has engaged in several other violent acts in the community.

Ms. **Soller**. Was this young boy a victim himself?

Mr. **Breault**. It's not real clear. There are some indications that he is, but in that particular case it's not very clear that he is. We strongly suspect that he is.

This child is extremely resistive to treatment. We have made many attempts to engage him in treatment unsuccessfully. Through a great deal of community teamwork with other agencies, we have now moved this case to a place where we have a court order ordering him to go to get help for sex abuse issues at a facility, this facility that Dr. Wasserman is referring to, and we now have the child's willingness to go there. What we don't have is the funding to send him there.

After 6 months of hard work to get this child to a place and to have a place ready for him to go, to be totally incapacitated is a real disservice. I want to state that this child is at very high risk to abuse other children as well as according to written testimony from an IHS physician, this child is himself suicidal.

We need that funding to get this kid in the placement now.

Dr. WASSERMAN. In answer to your question, I think during the psychological assessment that this kid had, he did admit that he had been victimized himself.

Ms. SOLLER. In the case of the therapy that's now available at Hopi, as I understand it, the needs first became obvious in February 1987 when Mr. Boone was arrested; is that right?

Dr. WASSERMAN. That's right.

Ms. SOLLER. When was the first time that therapy was provided for any resident of the reservation?

Dr. WASSERMAN. Well, the first time that I'm aware of that therapy was provided was in October 1987 when Ken and Dave began to come out to Hopi through funds that were made available from the Department of Justice, Office of Victims of Crime.

Ms. SOLLER. Mr. Hodder, was any of the money that paid for you to first come to Hopi from IHS Mental Health?

Mr. HODDER. Not that I'm aware of.

Ms. SOLLER. How about from BIA?

Mr. HODDER. I have no idea. I don't believe so. I think initially we were under contract with victims 'assistance money.

Ms. SOLLER. Dr. Wasserman, from where is the money for your project coming?

Dr. WASSERMAN. The money that was made available—there was basically $199,000 that was made available in September 1987, all of which, as I understand it, was kind of scraped together at the end of the year.

There was $100,000 that came from the Department of Health and Human Services; $79,000 that came as a supplemental Indian Child Welfare Act allocation from the BIA Department of Social Services, and $20,000 that came from BIA Education.

The $20,000 grant has ended. It was one-time money as were the other two sources of funding. The $79,000 grant ended on June 30. We're currently using up the carryover money that we didn't spent in the last fiscal year. The $100,000 grant was scheduled to end last December 31. We have an extension until June 30.

Basically, there has been no funding since September 1987 that's come into this program.

Ms. SOLLER. How does it affect a therapy program if you don't know what your future is after June 30?

Dr. WASSERMAN. Well, it has a very nonproductive effect, to put it mildly. For example, Ken and Dave work on contract. I never know from basically the end of one quarter to another whether I'm going to get a grant extended, so I can't give them a contract for more than 2 or 3 months at a time.

We can't start, for example, a boys' group. We've wanted to start one for months. If they're going to stop being here after 3 months, there's no sense in setting up a boys 'therapy group that is going to end in 3 months.

If they're not going to be there, the therapy group isn't going to continue, so we don't start it. Then every couple of months we learn that something's going to get extended, and it's a very piecemeal kind of situation.

I'm also not in any position to hire any additional full-time staff, which is what we really need. We very much appreciate the work that these two do, but it doesn't take the place of someone who's able to be there 40 hours a week. I can't hire staff because I don't have any money to pay them.

There are people that are interested in coming to work at Hopi, and I try to string them along as best I can, hoping that someday I'm going to be able to employ them. At this point all I know as a program administrator is that the money is gone after June 30 and, if we don't get more funding in the next couple of months, we're going to have to begin the termination process with our clients of therapy, because that's a very important part of the therapeutic process. We can't live on promises and revictimize these kids.

Ms. SOLLER. Have you made any efforts to get outside funding, other than the money from BIA and IHS?

Dr. WASSERMAN. I've made additional requests to BIA for funding and to the Department of Health and Human Services for funding. I've also applied for grants from the Community Foundation of Arizona and for grants from the State of Arizona from Victims of Crime Act money that was made available.

Ms. SOLLER. How much of your time do you spend trying to get other money to keep your program going rather than delivering services in the program?

Dr. WASSERMAN. In the last couple of months, for example, I've probably spent at least 60 hours working on the grants, not including the time that it takes me to go to tribal committee meetings to present the grants and defend them, which usually is about 6 to 8 hours per grant.

Ms. SOLLER. The services that you're providing on the Indian reservation now, have you made any attempt to combine these sort of western-type approaches that you have done now with more traditional Indian healing processes?

Dr. WASSERMAN. You heard the testimony a couple of weeks ago from Sylvia Lomahaptewa who is the community liaison with our project and was, in fact, the first person really hired through the project.

The existence of that kind of a position is one that helps us to figure out useful ways to integrate western approaches with traditional Hopi approaches. She helps me to understand what some of the ideas and the cultural values are so that those are respected in what we develop. The community support groups also are groups that have developed in kind of a spontaneous culturally-appropriate way that are modeled more on, say, talking circles than traditional forms of therapy. So there is that constant integration.

Mr. BREAULT. I feel like one of the most important services that we have been providing out there is being liaisons to the parent support group and encouraging that group and other groups to form. To me, that's the tie-in into local Native American health systems and spirituality, and so forth, is by developing parent support groups who then are owned, in fact, by community members who can then shape treatment programs and community efforts with their own cultural values. It's important to hire professionals who have background in starting support groups and supporting community members in doing that.

That's rarely asked about when professionals are hired, if they have a background in being able to do that, but it needs to be asked, especially in Native American communities.

Ms. **Soller**. Ms. Shiek, what's your experience been?

Ms. **Shiek**. It's been relatively similar in that. I'd like to emphasize, too, that I think the cultural issues are something that has to be taken into consideration when you do treatment because the families, one, are much more private and protective type of family unit. Communication certainly takes different forms. There is a lot of nonverbal communication that a person needs to be aware of in that process.

They certainly are wary of—in my situation, I think it is not as an employee of either the tribe or BIA, as an outside individual representing another agency, I think this is even more critical—to open up and to deal with these dysfunctional families that are in crisis, that there needs to be a lot of sensitivity to that.

Ms. **Soller**. What is your experience with the interrelationship of the therapy that you've been providing and law enforcement and the investigations that go on in a case?

Ms. **Shiek**. Some good and some bad. I think the thing that I find is that, at least initially, as the Blythes indicated earlier, we led the law enforcement through the first initial steps of how to get this type of a situation addressed and what issues needed to be dealt with.

I find myself frequently in a bind because I cannot always be an advocate of the family and the victim and the courts. This can certainly strain treatment. Sometimes they tend, if they are unable or unequipped to question children appropriately, that generally falls into my lap. Almost initially, it does confuse the issue of investigation versus treatment.

Ms. **Soller**. What has been your experience in how allowing the perpetrator back into the community immediately affects the victims?

Ms. **Shiek**. Prior to a trial or a hearing?

Ms. **Soller**. Yes; or immediately after the trial with no treatment; just having them back next door.

Ms. **Shiek**. It's devastating. It's devastating to the family and victim because there's no resolution. There's the constant fear then that may be reabused unless there is some type of separation and a period of time in which the victim and the offender are separate and there's assessment of the offender to determine his dangerousness.

There's always that chance that they will reabuse.

Ms. **Soller**. Mr. Hodder, what has been your experience at Hopi?

Mr. **Hodder**. Well, extremely similar. There are limitations on tribal courts as to what length of sentences can be given to perpetrators. There are insufficient treatment services available. We got into that earlier discussing the problem of placing one young man.

We have a case of a 15-year-old girl who was sexually molested by her uncle, within 3 months he was living just across the road from her again, and she was re-traumatized by the fact that he had been released after having served his sentence. No treatment services were provided him. He was back in the community. It's a disgraceful situation as far as I'm concerned.

Ms. **Soller**. Dr. Wasserman, what has been your experience with how you've been received by the school administration at Hopi?

Dr. **Wasserman**. The administration in general or the day school?

Ms. **Soller**. I mean, in particular, we had heard that you made training available to the staff at the Polacca Day School and that that training was rejected in some form; is that correct?

Dr. **Wasserman**. That was correct in this school year, and I believe it was also correct in a prior school year where our two consultants made a similar attempt to provide in-service training at that same school.

Ms. **Soller**. Has there been any interaction or any contact or outreach to you as therapists that has occurred by the agency superintendent in charge of this school in which the problems occurred?

Mr. **Breault**. No; and that's a great disappointment to me, that this is such a strategic location, where the abuse took place, for parents and teachers to heal their wounds and their hostility that have arisen between them as sort of a natural consequence to what took place there.

The fact that there was not a principal who understood child abuse issues and could expedite that healing process to me is really disgraceful. It has delayed the things we could have done. In this past year I think we could have done a great deal more than we have done if we had a principal that we could really work with in that situation and a principal who could work with the school board to help educate them and encourage them along those lines.

Ms. **Soller**. Has the school administration done anything to recognize that they recognize that child abuse is a problem?

Mr. **Breault**. We've initiated meetings with superintendents and they've verbally told us that they felt it was an important issue.

Ms. **Soller**. As I understand it, in fact, the community may have almost been victimized again by an action of the law enforcement authorities; is that correct? By placing an individual back in the school setting who was a perpetrator?

Mr. **Hodder**. Right. In fact, the case that I referred to just a few moments ago, the uncle of the 15-year-old girl was given a day release from the tribal jail to work in the kitchen at the school that Mr. Boone had victimized so many children. He was working on the school grounds serving food to the children.

Ms. **Soller**. This was a person who had been convicted of child sexual abuse?

Mr. **Hodder**. He was serving his sentence in the tribal jail at that time for molesting his niece.

Ms. **Soller**. What has been the school administration's reaction or attitude in the transfer of personnel who have been problems in your experience? Have they done an effective job? Do you think the transfers they've made are appropriate?

Dr. **Wasserman**. I think they have been very inappropriate and they've been very reluctant even to take those steps. We had a very severe problem with the principal last year at Polacca Day School. The committee heard testimony concerning his problems. The fact that he was denying his personal problems with substance abuse made it virtually impossible for us to operate in that school or to deal therapeutically with the school to try to heal the wounds between the community and the school, which is something that we all would like to see happen. It was just impossible with him as an administrator there.

Ms. **Soller**. From your observation, if the superintendent had exercised any kind of oversight at all, should he have been aware of the problems with last year's principal?

Mr. **Breault**. Absolutely.

Ms. **Soller**. Was any oversight exercised of which you were aware?

Mr. **Breault**. Not to our knowledge until we went in and confronted this principal twice personally about alcoholism issues, and so forth, and made that situation more and more aware, and then eventually the person left. In that sense, something was done about the situation.

There's no proactive going toward the situation to say, let's work with this and see if we can really work with you guys and try to get some real action toward the problem. It's always later, after something comes to light, sort of reluctantly taking action to do something. That's a tremendous problem.

Listen, a lot of these kids, when they do start showing their problems, it's going to be in school. They're going to start having problems with aggression, with acting out in different ways, with being very depressed, with declining school functioning, with soiling their pants at school, with refusing to dress out for gym. These are the kinds of problems that come up.

We need for those teachers to be able to get in touch with us and tell us about that and work with us. If the principal is, in fact, blocking that effort, you're blocking the whole system of treatment that we're trying to set up. Why isn't there a nurse at that school all the time? These kids are at high risk for bodily kinds of problems that they're going to show. We know that they are high risk for reabuse. There needs to be a nurse at that school. There's no nurse at the school. It is nurses who sexually abused children most frequently report to.

Ms. **Soller**. Yesterday Dr. Ross, who is the head of the education system for the entire West and South region, said that one of the reasons he didn't take action in the case involving the principal is because he did not receive written reports from you. Was there any outreach that he made directly to you to confirm these reports or to talk to you?

Mr. **Breault**. No.

Ms. **Soller**. Did you ever hear that, because there was some written report that you had not given him, that that was the reason why things were being delayed?

Mr. **Breault**. No.

Mr. **Hodder**. We were asked to state our concerns in writing, and we did that, but that was many months after having shared our concerns verbally with various people and also attempting ourselves to address the situation by confronting Mr. Eastwood with our belief, our clinical impressions, that he had problems with alcoholism.

Ms. Soller. There were also problems with the counselor. Should those have been obvious to somebody who exercised any oversight over that school at all?

Mr. Breault. Sure.

Ms. Soller. Was it, in your opinion, appropriate to transfer that counselor 11 miles down the road and allow him to be there for 1 year without any oversight or supervision?

Mr. Breault. No.

Dr. Wasserman. Not at all.

Mr. Hodder. We were shocked when we found out that he had been transferred to that facility and even more shocked when we had firsthand experience of him as a director of that facility. One of the problems we have on the reservation is housing for ourselves when we stay there overnight.

The decision was made to allow us to stay at the dorm overnight. This is a girls' and boys' dorm at Keams Canyon that Dr. Cargile was made the supervisor of, and we were housed there overnight, I think inappropriately. There's an apartment there at that dorm that is used by itinerant providers of services to IHS right across from the sleeping quarters of the girls who are boarded there.

Ms. Soller. As I understand it, the supervisor of Keams Canyon Boarding School up until now has been Dr. Lee Cargile?

Mr. Hodder. Yes.

Ms. Soller. He is the counselor who was transferred from Polacca Day School because of the inappropriate way he was dealing with the sexual abuse issue there?

Mr. Hodder. Yes.

Ms. Soller. There was no oversight, as far as you know, until you brought this to the attention of the Department of Education?

Mr. Breault. Yes; that's right.

Mr. Hodder. Exactly.

Ms. Soller. Do any of you, feel, that the current administration, either in the school or in the school system itself, overseeing Polacca and the other Hopi schools, is in any way acting adequately in dealing with the sexual abuse problem in the schools?

Mr. Breault. No.

Dr. Wasserman. No.

Mr. Hodder. There's been recent activity.

Ms. Soller. Is it enough?

Mr. Hodder. Well, no, hardly. No.

Mr. Breault. One thing that happened last year that was very helpful was a reporting procedure was sent to the schools from Washington, a reporting form that was given to all school personnel explaining to them how to report child abuse, and so forth. That was a helpful form. I believe that came from Christine Brown to Hopi. We were able to do in-service at Hopi High School, and so forth. That was one of the things we were going to do in-service using that form and talking about the signs and symptoms for abuse for teachers of Polacca Day School. We showed up to do the in-service and Mr. Eastwood said he forgot about it.

Ms. Soller. Can you think of any valid reason that would excuse the conduct of the administration of that school system in not exercising better oversight of the schools and just transferring their problem staff?

Mr. HODDER. The only thing as a clinician that I'm able to come up with is that some of the administration are actually members of families wherein victims exist and there's a powerful system of denial, confusion, isolation, and withdrawal that goes along with all families that are impacted by sexual abuse.

Ms. SOLLER. Would it be appropriate to have such a person overseeing or in any part of the administration of these programs?

Mr. HODDER. I think it needs to be looked at very closely. That person's functioning, I would suspect, would be severely limited by their personal involvement in that particular scenario.

Dr. WASSERMAN. I think the lack of sensitivity that Mr. Breault brought up really needs to be emphasized. This last year when the Polacca School Board with the agency's superintendent of education were looking for a new principal for Polacca Day School, I was attending a school board meeting the week prior to their interviews.

I specifically brought up to them that they should consider the issue of the situation in interviewing a principal for the school and specifically address the sexual abuse issues. That was a brand-new idea to them. They hadn't thought about it, hadn't planned to include it in the interviews.

To my understanding, I'm not sure that they even did include any questions or concerns about that when they did interview for the principalship of that school.

Ms. SOLLER. Mr. Chairman, I have no further questions.

Senator DECONCINI. Thank you.

Ms. Shiek, you testified, you made some reference to the suicide involvement of these young children. Is that a substantial problem or how would you weight that? Have you witnessed that?

Ms. SHIEK. Yes, we have not had a successful suicide. We have certainly had some suicidal gestures.

I think children express themselves sometimes in risky play, if I can put it that way, where they put themselves in danger——

Senator DECONCINI. I was just going to ask you, how do they do that and how do you judge whether it's just a kid with a lot of nerve and looking for some excitement, jumping out of a barn. I remember doing that at my grandmother's ranch into the hay. My mother thought I was going to commit suicide. I wasn't; I was thinking I was parachuting.

Ms. SHIEK. Well, I think it was to be taken in context of other behaviors that are exhibited by the child, but certainly the frequency of accidents—certainly we hear about accident-prone children. Research would indicate at this point that much of this accident prone is actually an attempt at suicide.

It's not a complete decision to do that, but the pull is in that direction.

Senator DECONCINI. What kind of examples can you recall?

Ms. SHIEK. One that sticks in my mind directly—well, one we've had direct as far as overdose. This is more typical of a pre-adolescent/adolescent type of behavior although it's been known to be for younger children.

The other is stepping out in front of a car or taking a bicycle and riding it on a very busy highway.

Senator DECONCINI. Looking for a problem

Ms. **Shiek**. Looking for a place for it to happen.

Senator **DeConcini**. Can any of you respond from your knowledge, how important is it in the counseling that you know which goes on and that you participate in that the counselors speak the native language of the particular tribe? Dr. Wasserman, do you want to try that one first?

Dr. **Wasserman**. On Hopi a lot of the young children, a majority of the young children, do not speak the native language.

Senator **DeConcini**. They don't?

Dr. **Wasserman**. The adults, many of them do, but it hasn't seemed to be an impediment in any of the cases that we've dealt with in that particular situation.

Senator **DeConcini**. Anybody else?

Ms. Shiek.

Ms. **Shiek**. I haven't any difficulty. I think it's understanding more the cultural issues as far as communication and treatment rather than the language barrier.

Senator **DeConcini**. Do you have something to add?

Mr. **Breault**. Yes; I think the most important factors are teamwork, a gradual constantly increasing number of native people who are taking ownership for professional positions and implementation of services, but one of the highest complaints we hear from families is lack of responsiveness. They say, people said they were going to come and talk to us, but they didn't.

Senator **DeConcini**. They didn't show up?

Mr. **Breault**. They didn't show up. And then we try it again and they didn't show up again. We made a report and nothing happened, and that kind of thing.

To me, the most important thing is teamwork and responsiveness multiculturally and multidisciplinarily.

Mr. **Hodder**. We do go out on a number of cases to visit with families with a local person from Hopi. Some of our most successful cases to date have been ones that we've cooperated with local counselors and intervened in a fairly comprehensive fashion.

In practice there will be a counselor talking with the parents in Hopi while we observe. In other cases Hopi counselors act as interpreters.

Senator **DeConcini**. In your experience how difficult is it for a non-Native American to become familiar with the culture of, say, the Hopis or any other Native American group?

Mr. **Hodder**. I think it's extremely difficult. In the case of the Hopis, I think it's a very arcane culture and I don't think we're even close to understanding much of what goes on.

Senator **DeConcini**. You say that's very significant. How do you deal with that? That's my experience, the little experience I've had with the Hopis and other tribes in Arizona. Some of it is written down, a lot of it you need to talk to the elders and the religious leaders and sit around for hours, and it's fascinating to me. It's just absolutely one of the most interesting things that I've ever had happen, but how do you get somebody into that? Just the experience, is that all there is?

Ms. **Shiek**. Time exposures and patience I think is the biggest thing. There's also instilling trust. I think this is, to me, at least in my experience, has been—my acceptance as a therapist only was when they saw that they could trust me.

Mr. HODDER. Our emphasis is on finding the natural child advocates from the community to——

Senator DECONCINI. Usually you can retain them and get them, but the problem is you don't have money. You can hardly retain yourselves and those that you have to move around to different places.

Which agency should be providing the funding and resources for after care and therapy? If you overlooked this whole thing and wanted to see funds available even though you had to compete with them and make applications or, if you couldn't get it all—obviously, what you said, Dr. Wasserman, how many different areas of funds, that's got to be enough to make you go ballistic trying to plan the next year and you, too, Ms. Shiek, and others.

I wonder if you have any suggestions on what agency do you think it should come from, flow from.

Ms. SHIEK. Originally, we had Mental Health Services through IHS, the Indian hospital. To my knowledge, that unit at this point is no longer in existence.

For us, I would think at this point that might be the most logical, certainly with funds going into DSS and law enforcement, too, for treatment and that that might be the most logical——

Senator DECONCINI. You think the Indian Health Service should be responsible?

Ms. SHIEK. That they have an allocated mental health counseling fund, maybe with even some specialty funds for sexual abuse victims and offenders, to have that earmarked so that it is utilized for those purposes.

Senator DECONCINI. Sir?

Mr. HODDER. I was just agreeing.

Senator DECONCINI. Okay, anybody else?

Dr. WASSERMAN. Yes; I think that one thing that's important to point out is it's not clear to me that the allocations at either IHS or the IA Social Service currently received can merely add on the burden of even one program that we're talking about at Hopi of $700,000-plus to come out of the budget that IHS Mental Health currently has in the Phoenix area office, for example. That's a very large percentage of their mental health budget. I want to point out that these types of services probably need to be looking at additional allocations.

We've also, as I've mentioned, been very fortunate with the assistance that we've received financially from the Office of Victims of Crime. I think that increasing—I know that this past legislative year there was an attempt to increase the percentage of funds that would be available for Federal victims of crime. That was not successful, but I would support further efforts in that direction because they have been very helpful in getting services to Indian country.

Senator DECONCINI. Mr. Breault.

Mr. BREAULT. I feel that the most important thing is that there be a plan drawn up toward community ownership and involvement, and everyone says that, of course, but I think it really needs to be demonstrated and written in rather specifically that that is the intent and how that's going to happen. Then, as we have been talking, it's clear that every agency we have been talking about has a very important piece of this problem.

Most of the abuse on Hopi gets reported to IHS physicians. Much of the behavior problems that we have to intervene on are happening at BIA schools. The tribe has employees affiliated with all these agencies and community organizations, and so forth. To me, it clearly has to be some kind of joint powers agreement that's there of a blend of funding.

Senator DECONCINI. Mr. Breault, you don't think there should be a central agency from the Federal funding side of where this money comes from? One of the problems we face is we don't know what you really have out there, just as you've pointed out here. It's a lot easier, I believe, for appropriators to say, well, these are the requests and we can't meet them all, but we can meet 80 percent so we're going to do it all into one thing. That's one of the disturbing things I have is it's all coming in here and I don't have a handle on it. I don't know that we need to change that; I'm just looking for your opinion.

Mr. BREAULT. I think of all of them, IHS would be the best to be the central agency. One of our strong recommendations, though, is in this type of situation that there be a team of Federal experts, administrators trained in child abuse and child advocacy, that come into these situations temporarily to organize a response system and then generate a funding plan.

Dr. WASSERMAN. I think we also need to stress that we need multiple-year funding for these kinds of projects.

Senator DECONCINI. Yes; well, let me ask you, Dr. Wasserman, in your situation, what is the amount of money to meet your needs, would you estimate? If you had your druthers, if you had what you think you need there to satisfy, what are we talking about?

Dr. WASSERMAN. In order to provide the kind of comprehensive treatment that I mentioned earlier, the ideal situation, that does not include offender treatment which is a separate specialization, we would need a budget of about $750,000 at least in the first year and about $500,000 in subsequent years.

Senator DECONCINI. What is your budget now?

Dr. WASSERMAN. Well, we had $199,000 as of September 1987. So that's for 2 years almost.

Senator DECONCINI. Thank you.

Senator Daschle?

Senator DASCHLE. I guess I just have one question, given the agenda set this morning. It concerns resources and the confidence that you've had that, if given proper resources, we would be successful in eradicating the problem. The sense I have is that until we deal with some of the more pervasive problems relating directly to economic vitality and opportunity, that if we poured twice $700,000 into this, we probably wouldn't solve the problem, but that's only a layman's guess. I don't really know that.

Have you had the opportunity to look elsewhere in other parts of the country or the world where poverty is just as pervasive, but yet problems such as this are not nearly as significant?

Is this problem symptomatic of poverty or is it not necessarily a given that where poverty exists, problems as grave and as profoundly severe as this are significant?

Ms. SHIEK. It doesn't seem to have any boundaries or direct association with poverty because it occurs at all socioeconomic levels, races, geographic areas. I think what makes it look so overwhelming particularly on the reservations is because of the closed social systems and the lack of integration and the lack of resources. As I had indicated earlier, it's multi-generational. So what we have done is perpetuate the problem rather than to arrest the problem.

Senator DASCHLE. But yesterday, Ms. Shiek, you said that it existed to a far more significant degree on the reservation.

Ms. SHIEK. Right, but I don't think that I could say that it's an economic problem; it's more, I think, a social-geographical isolation problem that has contributed to its vast spreading, if I can put it that way. It's not been interrupted. The cycle has not been stopped. I think this is why, and I think what the other panel members are also saying, is that if—I don't know what the percentage is at this point, but let's say that even 50 percent of the victims become perpetrators and then they create that many more perpetrators, it becomes very permeable in its growth.

Mr. HODDER. Yes; I think what testimony has been establishing, is that services haven't been provided which is perhaps part of why the problem is so significant on the reservation. Something does need to happen to break the cycle of victimization.

It does grow exponentially. There's good research to suggest that a large percentage of victims become perpetrators. In a lot of the metropolitan areas, the most recent kind of therapy is victim-perpetrator therapy that combines the two aspects of trying to break that cycle of sexual abuse.

Senator DASCHLE. So what you seem to be telling me is that, regardless of what economic environment there may be, that to a large measure, if given adequate resources, we could eradicate much of the difficulty that you've so clearly described this morning?

Ms. SHIEK. If both ends of the continuum were attended to; that is, not only victimization, but also the offenders. If we do not have both in place, then all we are doing is just handling a portion of that. If the youthful offenders are not treated, the problem doesn't stop.

Mr. BREAULT. If there's community ownership truly for the problem. In other words, if there's lots of self-help groups, if there is a groundswell of community demand and refusal to keep quiet about these problems and just keep talking about them until they stop, because sex abuse cannot thrive when it's talked about; it thrives in secrecy. We know that really well.

If the community just keeps talking about it and just keeps saying we will not tolerate this, pedophiles won't go there.

Senator DASCHLE. How realizable is that condition in your opinion?

Mr. BREAULT. I think that's possible. There is a national groundswell of self-help movements everywhere. There have been other communities that have been able to really successfully impact alcoholism, and so forth, with self-help movements. It's possible.

The thing is you've got to get professionals who understand that and know how to help communities form self-help groups. With the kind of hiring that we've been talking about that goes on in these situations, you're not going to do it.

Dr. WASSERMAN. We think that you've seen the result of that in the parents that came to testify here a couple of weeks ago, where the community members have taken it upon themselves to educate themselves, to do the prevention work which we haven't talked much about, but which is a main component of our program. The kinds of prevention work that get done also help to deal with some of the other serious problems.

Economic development is obviously a serious problem. The prevention programs that we do for children help to stress decision-making skills, self-esteem, self-confidence, the kinds of skills that they're going to need to face a variety of problems and that can hopefully ameliorate some of the other problems.

You've seen firsthand the success of the parents who have been able to come here to Washington, DC and testify before this committee, some of whom 1 year ago or even a few months ago were having very severe personal problems themselves and would never have been able to do that.

Mr. BREAULT. I think one area where money would be well spent in terms of agencies would be in aggressive and effective employee assistance programs for alcoholics and people with all kinds of mental health problems that are employees of Federal agencies—when you're in a city and trying to intervene in an alcoholism situation, one of the most effective allies you have is an employer who has a good program for his or her employees. They can put pressure on that employee as well as support at the same time.

There is none of that, not even close, as we can determine, on the reservations. From the Federal level, to implement those kinds of employee assistance programs I think would really be money well spent.

Ms. SHIEK. I think the other area where money needs to be spent and is not is the treatment of the adult offender, that that be mandatory from the court at the point of imprisonment and on follow-up after parole or probation, that they not be just allowed to leave and that there be strict supervision. We don't know that we cure them. As a matter of fact, I would say most indication is that we don't cure, but it's like alcoholism, you attempt to help them manage the problem.

Dr. WASSERMAN. I think as long as we're talking about funding, yesterday there was a lot of discussion about a mandatory Federal reporting law. One of the first questions that came to my mind is, who's going to investigate and what services are going to be there for the victims with the increase that you would probably see in reporting? Again, that comes down to funding. I think that's a very serious consideration.

We all face the dilemma of not being able to provide what we know meets the professional standards in terms of treatment. I think that you heard one of the parents talk about her personal dilemma in going out and doing prevention work and reaching out for children and telling them that there were services that she knew were not available. That's the same situation that you're talking about setting up. What if you do enact Federal legislation for mandating reporting, who is going to do the investigations?

Senator DASCHLE. That's an excellent point. I would comment that in some ways the reports themselves could serve as the catalyst to bring about the additional resources we need. Without the reports, without any documentation, it's not nearly as compelling a case. You're absolutely right, that doesn't take anything away from what you've said, because that would be in some ways even a harsher treatment of the situation. But, nonetheless, I think it would serve a very useful purpose in being able to tell our colleagues and being able to argue with the administration, "Look what's happening and look how little we're doing to cope with it."

Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Senator Daschle.

I think for the record it is interesting to know that when we played the tape of Mr. Price here yesterday as a defendant, I understand he's received no assistance; is that correct to your knowledge?

Ms. SHIEK. As far as I know, he has not. As far as I know, when he would be released, he would not necessarily be ordered to——

Senator DECONCINI. That's right. You're setting loose a time bomb there perhaps.

Ms. SHIEK. Exactly.

Senator DECONCINI. Thank you very much for your testimony. It has been extremely helpful to the committee and very thought provoking about the magnitude of the problem and where to go.

Do you have any other questions?

Ms. SOLLER. Senator, they have submitted some statements for the record.

Senator DECONCINI. Without objection, those statements will appear in the record.

[Prepared statements appear in appendix.]

Senator DECONCINI. Thank you for the time you've given us today.

Our next witness will be Dr. Jane Burnley, Director, Office for Victims of Crime, Department of Justice.

Dr. Burnley, would you please raise your right hand? Do you swear the testimony you are about to give the committee is the truth, the whole truth, and nothing but the truth, so help you God?

Ms. BURNLEY. Yes, I do.

Senator DECONCINI. Ms. Soller.

Ms. SOLLER. Thank you.

STATEMENT OF JANE BURNLEY, DIRECTOR, OFFICE FOR VICTIMS OF CRIME, DEPARTMENT OF JUSTICE, WASHINGTON, DC

Ms. SOLLER. Dr. Burnley, what is your current position, please?

Dr. BURNLEY. I'm the Director of the Office for Victims of Crime which is in the U.S. Department of Justice.

Ms. SOLLER. What does that office have to do with services to Indian people?

Dr. BURNLEY. We administer the Victims of Crime Act and a small portion of the funding that is available to us is earmarked for victims of Federal crimes. That's 1 percent of the crime victims' fund.

Ms. SOLLER. Where does this money for the Victims of Crime fund come?

Dr. BURNLEY. The Crime Victims' fund was authorized by the Victims of Crime Act of 1984. The money is not an appropriated amount; it comes from Federal criminal fines, penalties, and bond forfeitures which are deposited into the fund. Our first year of collections was 1985, and we made grants for the first time in 1986.

Ms. SOLLER. How much money will be available for grants this year to Indian people who are victims of crime?

Dr. BURNLEY. We'll have approximately $2 million throughout this year that will be devoted to a variety of programs that we've initiated in Indian country which address the problems of crime victims in Indian country.

Ms. SOLLER. If there are no changes in the law, would that amount be what you would expect to exist each year?

Dr. BURNLEY. Yes; we only have 1 percent. The Crime Victims' fund is capped at $125 million through fiscal year 1991, at which point it is raised to $150 million through fiscal year 1994. Last year's collections totaled about $94.5 million. If collections reach their cap, all of the money that we would have available for the Federal program is unlikely to exceed $2 million by very much.

Ms. SOLLER. The cap of $125 million is for all crime victims and the $2 million is the only money—is the money that's available—for Federal crime victims?

Dr. BURNLEY. Of which, Native American victims on Indian reservations are one group of Federal crime victims. But since about 1 year ago, our office made a determination from our experience with a number of cases that Native American victims on reservations would be the highest priority for the use of those funds. Clearly, the bulk of our moneys that go toward victim services when the victim is a victim of a Federal crime, the bulk of our money is expended on Indian reservations.

Ms. SOLLER. Now we heard testimony earlier that the first funding at Hopi came from funds made available from your office. Could you explain how your office became involved in the *Hopi* case?

Dr. BURNLEY. Well, I joined the Victims Office in April of 1987. That case came to the attention of the Justice Department earlier that year. Shortly before I arrived, our office received a request for assistance from the Victim-Witness Coordinator in Arizona in the U.S. attorney's office that was responsible for prosecuting the *Boone* case.

They were aware of over 100 potential child victims in that case and they wanted some emergency assistance, people who were experts in child sexual abuse, to go on the reservation and help with interviewing and training of school staff and other professionals on the reservation.

Our office had never received such a request for direct funding before, and we made $12,000 available initially to help out in the investigation. Our idea was that if there was expertise available to the FBI investigating the case and the BIA criminal investigators, then it would ease the trauma of the children throughout the investigation and be of assistance to the families and the community.

Ms. SOLLER. Did you make additional funds available later on in the progress of the case?

Dr. BURNLEY. Yes; we did. Boone was sentenced in June.

Ms. SOLLER. June 1987?

Dr. BURNLEY. June 1987. Just prior to that, I made a trip out to Hopi and met with family members and some of the school staff and others on the reservation. It was very clear that there was a need for mental health treatment for the victims. That was in June. No treatment had been provided yet.

I came back to Washington and had several meetings with people in BIA and the Indian Health Service. In the fall, I made a return visit to Hopi and learned during that visit that the need for treatment was extremely pressing. No funding had been provided nor had a treatment program begun.

Working with the Victim-Witness Coordinator in the Arizona U.S. attorney's office, Jan Emmrich—our office decided to make $50,000 available to fund short-term, emergency treatment. The idea was to try to identify therapists to whom the children and the families on Hopi could turn for treatment.

I interviewed a few psychologists in Arizona, but we had trouble finding the right people. There did not seem to be adequate expertise on the reservation to provide the treatment.

We identified Mr. Hodder and Mr. Breault, who were here testifying, contracted with them to fly twice a month to the reservation starting in October.

We informed the BIA that our money was short-term, emergency treatment, which we could fund for 6 months' just so there would be something on the reservation for the families.

Ms. SOLLER. After you provided funding for Hopi, have you provided funding in any other cases?

Dr. BURNLEY. Yes, a couple of other multiple victim cases, very large victim cases, on Navajo came to the attention of the Justice Department. We had a similar request to provide additional expertise during the interviewing of some of the children. I believe that was in Lower Greasewood.

We provided additional funding for that consultation. Since then we set up a $250,000 emergency fund which the U.S. attorney's offices could access when large multiple victim cases, and other types of crimes warranted a need for victim services.

Through that program, we have provided treatment funding for the *Colorado River* case in Arizona and Pine Ridge, SD. At the Rocky Ford School in South Dakota we provided 3 months of treatment for some 20 to 30 boy and girl victims.

Ms. SOLLER. What has been the attitude of other agencies toward providing treatment moneys from your experience?

Dr. BURNLEY. The attitude of other agencies in providing treatment?

Ms. SOLLER. Yes.

Dr. BURNLEY. Well——

Ms. SOLLER. In providing money for treatment.

Dr. BURNLEY. I participated in numerous meetings with the BIA and with Indian Health Service professionals. There hasn't been much new money available in these multiple victim cases when they have arisen.

Arranging for services has been rather difficult.

Ms. SOLLER. Why aren't current victim compensation programs paying for some direct treatment programs?

Dr. BURNLEY. About half of the Crime Victims' fund is awarded in grants to States for victim compensation. There are 42 States that share in the Federal victims' compensation money.

Although the vast majority of States have victim compensation programs which have grown tremendously over the last 2 to 3 years, they are virtually unknown on the Indian reservations. Very few victims of crime on reservations even know that the State has a victim compensation program or that they might be eligible. That was something we became aware of about 1 year ago.

We have initiated several steps to increase the awareness of compensation as a potential funding source for treatment because victim compensation has over the last couple of years grown tremendously as a way of funding individual treatment for child sexual abuse victims, but that hasn't been the case among Native American tribes.

Our office has tried to work with the National Association of Crime Victim Compensation Boards. They have an outreach effort to extend information to reservations and to get information to the reservations so that victims will know these funds exist and they can apply.

The idea is that they would be judged by the same criteria as are victims of State crimes with regard to their eligibility and the amount of compensation.

Ms. SOLLER. Wasn't VOCA originally intended or originally written to allow Federal crime victims to get more than 1 percent of the share?

Dr. BURNLEY. Yes, when VOCA was passed in 1984 up to 5 percent of the Crime Victims' fund was designated for Federal crime victims.

Ms. SOLLER. Which would allow Indian victims of crime to have a larger percentage?

Dr. BURNLEY. Yes; have a larger earmarked percentage. There's nothing that prohibits an Indian tribe from applying for a victim assistance grant which the States make, and we have encouraged that. Our experience has been that only 10 or 11 States have made small victim assistance awards to tribes out of their victim assistance state grants. That, I think, is going to be increasing.

Victim compensation was an area which was completely neglected on the reservations, and that is beginning to change.

One year we did receive 5 percent of the fund for Federal crime victims—which could be in excess of $5 million when the fund reaches its cap of $125 million. In 1986, which incidentally was the same year that the Major Crimes Act was amended to give Federal jurisdiction in child molestation cases, the Children's Justice Act amended the Victims of Crime Act and reduced the amount of money for Federal victims of crime from 5 percent to 1 percent.

Ms. SOLLER. So, in other words, the same year that Congress increased the number of victims who could be eligible for these funds, there was also a decrease in the amount of funds made available; is that right?

Dr. Burnley. Yes; in the same year that they expanded the Federal jurisdiction for prosecution in child sexual abuse cases, which I think heightened awareness and is a reason these cases are now coming to light.

Ms. Soller. If VOCA were amended to go back to its original intention of 5 percent, there would be $4 million more available for Federal crime victims with Indians being given the highest priority by your office for that money; is that right?

Dr. Burnley. Yes, there would be increased funds. The Department notified the Congress of its desire to reinstate the full 5 percent for Federal crime victims in the last Congress during the process of reauthorization of the Victims of Crime Act. The result was to have 15 percent of the 4.5 percent which is awarded to States for the Children's Justice Act, earmarked for child sexual abuse on Indian reservations. So we received approximately $600,000 more which will be available this year for the first time.

Ms. Soller. Restitution might be ordered by a court of a defendant or a perpetrator at the time of sentencing. It would also be another possible mechanism for funding this treatment; isn't that right?

Dr. Burnley. Restitution would be a fine mechanism for courts to order convicted perpetrators to assist in the rehabilitation of their victims.

Ms. Soller. In the case of *J.D. Todd,* in fact, the U.S. attorney's office asked for a substantial amount of restitution, but the judge ordered a fine instead, isn't that right?

Dr. Burnley. The U.S. attorney's office in Arizona is very keenly interested in restitution as a mechanism to assist victims. Yes; the U.S. attorney's office did request that. The judge did not do that.

Ms. Soller. Let me make sure that I understand this correctly. If there is a court order for, say, $100,000 of restitution for the victim, that $100,000 could go fully for treatment of that victim, is that right?

Dr. Burnley. Or the group of victims, potentially, yes.

Ms. Soller. If there is instead a $100,000 fine, that money would go to VOCA, of which American Indian victims would be eligible, at most, for a part of 1 percent of that $100,000?

Dr. Burnley. Yes; A Federal criminal fine would be deposited into the crime victims' fund. And yes, the percentage for Federal victims is 1 percent.

Ms. Soller. So which do you think is more effective as a way of getting treatment for the victim?

Dr. Burnley. Well, when restitution is ordered and it can in fact be collected, it is very direct, and it can be earmarked for those victims in that particular case.

Ms. Soller. But if in fact a defendant is indigent, then the victim would still be eligible for funds for treatment under VOCA?

Dr. Burnley. Oh, certainly. A victim of a crime is eligible to apply for compensation from a State-operated victim compensation program, or programs which are established locally can apply for victim assistance grants.

Ms. Soller. But still, it is restricted by the amount of 1 percent?

Dr. BURNLEY. Up to 1 percent is earmarked for Federal crime victims. That is the only money which is specifically earmarked.

There actually are problems that we are finding in many States as we've moved to increase the awareness of victim compensation. One of the problems is that so many times the Federal cases take a long time from the time that they become known to the authorities. I understand you've had testimony from FBI investigators about the difficulties of distance and time in completing investigations in extremely remote areas.

In Arizona, for example, the application for victim compensation has a certain time limit within which it must be submitted from the time the crime occurs or is known to the authorities. Applications for compensation from victims in these cases on reservations often don't meet those time limitations.

So these are problems we are encountering as we increase awareness of victim compensation as a potential funding source for Native American victims. This will have to be dealt with over the next year or two.

Ms. SOLLER. Senator, as I understand it Dr. Burnley wanted to submit a statement later for the record, but it was not available today.

Senator DECONCINI. That would be very helpful.

[Prepared statement of Dr. Burnley appears in appendix.]

Ms. SOLLER. I have no further questions.

Senator DECONCINI. Senator Daschle.

Senator DASCHLE. No questions, Mr. Chairman.

Senator DECONCINI. Dr. Burnley, do you know if the administration is proposing any change in the percent of funds that would be available for these programs?

Dr. BURNLEY. Senator, we attempted to do that just this last year during the reauthorization of the Victims of Crime Act. Having just completed that process this past October——

Senator DECONCINI. What did you try to raise it to? I've forgotten.

Dr. BURNLEY. Actually, we wanted the full 5 percent restored for Federal crime victims.

Senator DECONCINI. Did we take it away? Did Congress take it away?

Dr. BURNLEY. Yes; in 1986. We were reduced from 5 percent which was originally available for Federal crime victims to 1 percent in 1986. As we have moved into this area it's very clear that there is a need for funding.

Senator DECONCINI. That was not a cost saving, it was just a readjustment of the proportions, right?

Dr. BURNLEY. Well, it was an earmarking of those funds for another purpose. They were earmarked for the Children's Assistance Justice Act.

Senator DECONCINI. Right. They didn't go back to the deficit or something like that? It didn't reduce the total amount of funds available, but just reduced the amount that was available for this program?

Dr. BURNLEY. That's right. It funded the Children's Justice Assistance Act, which is a grant program for the States for child sexual abuse.

Senator **DeConcini**. Thank you. I have no further questions. Thank you, Dr. Burnley, for the help, and we welcome your statement.

The committee was planning to proceed with another panel but because it is 10 minutes to 12 now we will recess until 2 o'clock and then take up the panel that was scheduled to go on about 11:40. We hope that doesn't inconvenience too many of you, but we would appreciate it if you could be here at 2 o'clock. Thank you.

[Whereupon, at 11:50 a.m., the committee recessed, to reconvene at 2 p.m. this same day.]

AFTERNOON SESSION—2 P.M.

Senator **DeConcini**. Senator McCain is in the Armed Services Committee. They are having a special meeting on the nomination of Mr. Tower, so we are going to proceed.

Our next witness will be Howard Davidson, Director, Center for Child Advocacy.

[Witness sworn.]

Senator **DeConcini**. Mr. Ballen will do the questioning.

STATEMENT OF HOWARD A. DAVIDSON, DIRECTOR, NATIONAL LEGAL RESOURCE CENTER FOR CHILD ADVOCACY AND PROTECTION

Mr. **Ballen**. Thank you very much, Mr. Chairman.

Mr. Davidson, could you please state your full name for the record?

Mr. **Davidson**. Howard A. Davidson.

Mr. **Ballen**. Sir, what is your position?

Mr. **Davidson**. I am staff director for the National Legal Resource Center for Child Advocacy and Protection, which is a program of the American Bar Association, located here in Washington.

Mr. **Ballen**. How long have you held that position?

Mr. **Davidson**. For 10 years.

Mr. **Ballen**. In that position, what are your areas of expertise?

Mr. **Davidson**. My personal areas of expertise are focused in the area of child abuse and neglect, specifically child protection issues as they relate to the legal process and the judicial system.

Mr. **Ballen**. In fact, sir, you have a long and distinguished history of publishing articles in this field?

Mr. **Davidson**. I have written a number of articles that have been published in professional journals, a number of book chapters published in books in the field, and our center has produced over 40 publications on related topics concerning child abuse and neglect.

Mr. **Ballen**. Mr. Davidson, as part of your work have you extensively studied child reporting laws, among other areas?

Mr. **Davidson**. Yes; I have.

Mr. **Ballen**. Isn't it true, sir, that in all 50 States there are laws that require mandatory reporting of child abuse?

Mr. **Davidson**. Yes; there are. Between 1963, when the first State legislature of this country enacted a mandatory child abuse reporting law, and 1967, all 50 State legislatures enacted some form of mandatory child abuse and neglect reporting legislation.

Since that time just about every State has significantly refined those laws, and many are amended on an almost annual basis.

Mr. BALLEN. Sir, what occurs if an education professional or teacher does not report child abuse under these State laws?

Mr. DAVIDSON. I can tell you what the law says may happen; whether it happens or not is a matter of some question. More often than not, of course, no action is taken at all.

But what the laws of most of the States say is that the teacher, who in all 50 States is a mandated reporter by law, can be criminally prosecuted for failure to report if he or she has reason to believe a child has been abused or neglected and yet fails to do so. But, again, such a prosecution is up to the discretion of a local prosecutor, and it is typically a misdemeanor offense. We hear around the country that there are relatively few prosecutions of that type.

Mr. BALLEN. Sir, is there also provided under these laws immunity from civil suit?

Mr. DAVIDSON. Yes; there is.

Mr. BALLEN. Very good.

Does the Federal Government have such a law to cover Federal Indian schools?

Mr. DAVIDSON. No; it does not.

Mr. BALLEN. Now, in 1974 Congress required States to adopt mandatory reporting laws as a condition of all Federal aid, but did not require such reporting on Federal Indian schools; is that correct?

Mr. DAVIDSON. Not entirely. Again, remember, by 1974 each of the 50 States already had in place a child abuse reporting law. What the 1974 Federal legislation—Public Law 93-247—was intended to do was: (1) to bring some uniformity to those State laws and to assure some expansion of those laws to meet several basic, minimal requirements that were seen by experts in the field as being necessary for all the States to establish; and (2) to tie into this some Federal funding incentives to encourage the State legislatures to enact these changes.

Mr. BALLEN. The point is, however, that Congress, while requiring the States to meet these minimum standards in terms of reporting, did not require the Federal Government to do so on Indian lands?

Mr. DAVIDSON. That's correct.

Mr. BALLEN. Do you know why Indian lands were left out of this legislation?

Mr. DAVIDSON. No; but I have reviewed the legislative history for the 1974 act and find nothing in the legislative history on this point. In addition, although I was not in Washington during the period when Congress was considering that legislation initially, I have talked to someone who was here, and they have informed me that the issue of coverage or applicability of the mandatory reporting requirement on Federal lands simply never came up.

Mr. BALLEN. So this is something that was not mentioned out of neglect, or for whatever reason, in the legislative history in 1974?

Mr. DAVIDSON. That's correct.

Mr. BALLEN. Now, since that time there have been other attempts, have there not, by Congress to strengthen State mandatory reporting laws; but, again Federal Indian schools were left out?

Mr. DAVIDSON. That's correct. In 1980, and again in 1984, the Federal Child Abuse Prevention and Treatment Act was strengthened to require a broadening of the coverage or scope of State child abuse laws as a condition, again, of the Federal funding.

For example, States were required to assure that sexual abuse and sexual exploitation, including protections for children used in pornography and prostitution, were covered under their mandatory reporting law.

In 1984 there was a new requirement that States cover abuse of a child committed in an out-of-home care setting, by someone responsible for their care, under their mandatory reporting laws.

Mr. BALLEN. Generally, Mr. Davidson, what do these State mandatory reporting laws require?

Mr. DAVIDSON. If I can briefly relate them to you, I think there are seven essential elements to all of these laws.

First, there are typically a list of mandated professionals—that is, professionals who are designated in the statute as being required to report. They are listed by professional group.

Second, the agency that shall receive these reports, and the immediate investigative action that those agencies must take when a report is received, is specifically set forth in the statute.

Third, laws make it clear exactly what type of abuse and neglect must be reported, such as physical abuse, sexual molestation, abuse of children in institutional care, emotional maltreatment, medical neglect, and so forth.

Fourth, the laws contain a clear statement of legal immunity for persons making reports who are acting in good faith. They also contain an abrogation of most legal privileged communications that might otherwise have prevented these professionals from reporting. And in most States a criminal penalty, as I mentioned earlier, is attached for the act of failing to report as required by law.

Fifth, increasingly the States have placed requirements in their laws to assure the prompt sharing of child abuse report information between Social Services and Law Enforcement agencies, as well as the use of joint investigations between them, and the involvement of what are called "multi-disciplinary child protection teams" in the case decision-making process.

Sixth, the statutes all contain precise provisions regarding the confidentiality of child abuse report records, particularly to safeguard the identity of the original reporter of the abuse or neglect. Most States have set up formal child abuse central registry systems to maintain reported information in a way that can help protect children from further, abuse.

Seventh, the laws are now quite precise about the power of the agencies that are responding to an abuse report to take the child into emergency protective custody and to petition the courts for temporary or permanent custody of the child.

Mr. BALLEN. Thank you, Mr. Davidson.

The BIA has issued internal guidelines, which do not have the force of law, regarding reporting. In your opinion, sir, are these internal policy guidelines enough, or should Congress enact some legislation to fill this gap?

Mr. DAVIDSON. Well, in my personal opinion, there are some problems with the BIA policies that have been shared with me.

First, as you mentioned, sir, they don't have the direct force of law. I note that, for instance, the Armed Services have specific regulations and instructions requiring child abuse reporting; but they, of course, do have the force of law because military personnel must follow these regulations and instructions and policies and can be, of course, punished for failing to do so.

Second, the policies only appear to be specifically applicable to a BIA employee, and we know, of course, the problem of child abuse and neglect is something broader than just its applicability to formal agency employees. There may be others who work with Indian children—other professionals who are not specifically BIA employees, as well as, of course, general citizens who should report as well.

Third—and this has been alluded to earlier—even though the BIA policy statements state that there can be sanctions imposed for employees who fail to report, I would doubt that many employees, if any at all, have been formally demoted, fired or criminally prosecuted under Federal law for failing to follow these requirements.

It has been our experience, from what we have seen around the country, that criminal sanctions and punitive disciplinary action against employees for not reporting child abuse is, unfortunately, something that seldom occurs.

Fourth, the policy rightfully encourages the use of the multi-disciplinary child protection team in the handling of child abuse and neglect cases. Again, that is an important reform throughout the country. However, there is no guarantee from these policies that these child protection teams will be fully funded and effectively functioning on every reservation.

This is probably one of the single greatest reforms in the handling of child abuse neglect cases—to have a cooperating group of professionals from different disciplines involved in the handling of these cases—and it is not enough to merely say that they should be used. You need to have some assurance that programs of this type will receive adequate financial assistance and that they really will be in place everywhere.

Fifth, there is no mention in the BIA policies of a Washington-based central registry system for the compilation of child abuse and neglect reports. Each of the Armed Services has developed a central registry system so they can, in some centralized way, maintain information about reported child abuse and neglect. I think it is particularly important to have such a central registry system to store information about offenses committed against children by BIA personnel. Again, the military has done a lot in this area, and most of the States have developed some sort of sophisticated central registry record-keeping systems.

Sixth, the policy fails to instruct BIA personnel managers in the field who are involved in the screening of employees to work with children to try to get information from State child abuse and neglect central registry systems. Many of these employees may have been reported in a State to the child protective service agency, and those central registries that exist in each of the 50 States may have valuable information on those prospective employees. I see nothing in the BIA policies addressing that issue.

Mr. BALLEN. Mr. Davidson, one final question. How would you characterize the state of the BIA with regards to child abuse?

Mr. DAVIDSON. I think it is important for me to say that we have been focusing, through your questions, on what child abuse reporting laws look like. I think we have known from the beginning that merely having such statutes, merely having a mandatory child abuse and neglect reporting law, can give us a very false sense of security.

If, at the same time that we have such legislation in place in our States, we do not have—and, in fact, we do not in many of our States—adequate financial resources to assure that case workers have manageable case loads, are professionally trained, and that there are adequate treatment personnel to work with the perpetrators and the victims, we are, in some ways, engaging in an exercise in futility.

The States have been helped immensely since 1974, not only by this Federal Child Abuse Prevention and Treatment Act, which provides Federal funds to the State child abuse programs, but, more importantly, by the Federal Title 20 program of the Social Security Act, which is now called the Social Services Block Grant, which has led to a vast increase in professionalism within State and county child protective service agencies.

Again, the system is not perfect in the States and the counties. We hear about that on the news and on television programs all the time. But it does appear that most of our States and counties, in terms of their child protection programs, are ahead of where we are now with the response to child abuse and neglect through the formal policies of the Bureau of Indian Affairs and within the tribes.

Mr. BALLEN. Thank you very much, Mr. Davidson.

Senator DECONCINI. Mr. Davidson, are you telling us that it is bad but it is not as bad as it sounds? What are you saying? Are you saying there are some positive things that have occurred?

Mr. DAVIDSON. I am impressed with the language in the BIA policy statements about the nature of the problem of child abuse and neglect.

Senator DECONCINI. That's the newest ones of 1988; is that right?

Mr. DAVIDSON. Even their directive from 1987, that suggested to me that the problem had been recognized by them and that there needed to be an appropriate response.

Senator DECONCINI. What kind of confidence do you have that that will be followed?

Mr. DAVIDSON. I'm not here today as an expert——

Senator DECONCINI. I understand.

Mr. DAVIDSON [continuing]. On the ability or inability of the BIA to implement this policy. My concern is that this committee attempts to do whatever it can to assure that the Indian tribes have the financial and personnel resources to properly carry out such a policy, because I fear too many of our State and county child protective service agencies have not been given those resources. Yet, we expect them to protect children and to properly respond to child sexual abuse cases.

In other words, this is a problem that is much more widespread than exists on the Indian reservations; however, it is within your power to address this more narrow area.

Senator DECONCINI. Thank you.

From your professional views, those guidelines, if, in fact, they were followed and implemented, if there were adequate resources, that would be a major step and major improvement?

Mr. DAVIDSON. Absolutely. But, again, professional training and adequate personnel are absolutely essential. You need to have adequate training for physicians, social workers, mental health professionals, attorneys, and judges, and the financial resources need to be there to do that.

Senator DECONCINI. Have you or your organization ever done any estimates on what they think the cost is, both in numbers and in professionals, to provide necessary or adequate counselling and assistance in the area of child abuse?

Mr. DAVIDSON. No; we haven't, Senator, and I think that's a very good question. The U.S. Department of Health and Human Services, through its National Center on Child Abuse and Neglect, has been, since 1974, addressing the issue of how the States can do a better job. They have provided some demonstration project funding to improve the handling of these cases on Indian reservations. But they do not have a program to provide block grant funds to the tribes in the same way that they provide block grant funds to the States.

Senator DECONCINI. Can you submit the model to us?

Mr. DAVIDSON. Well, again, I'm not sure that there is a "model." The Department of Health and Human Services has published a number of documents, such as a guide to suggested State child abuse legislation—a document that I think would be particularly helpful for the committee to look at.

About 8 or 9 years ago the department also published some guidelines for State and county child protection programs. Again, I think that there is a road map for use by the tribes.

I should say that the Department of Health and Human Services has also for a number of years collected Indian tribal codes, with a view toward having technical assistance and resources available to help the tribes if they desire to improve their codes related to the handling of child abuse and neglect cases.

There is also a national clearinghouse on child abuse and neglect information that could be a tremendous resource to this committee, to the BIA, and to the individual tribes, and I have provided Mr. Ballen with information about that clearing house——

Senator DECONCINI. Thank you.

Mr. DAVIDSON. When it comes time for you to look at a remedy you will have assistance.

Senator DECONCINI. Those are good suggestions, and we will follow up on them.

Senator Daschle.

Senator DASCHLE. I have no questions.

Senator DECONCINI. Thank you, Mr. Davidson.

Mr. DAVIDSON. Thank you, sir.

Senator DECONCINI. We appreciate your being here.

We are now going to take the panel we missed this morning: Margaret Allen, Child Welfare Supervisor, Gila River Indian Community; Roxanne Howard, Juvenile Intake/Court Counselor, Eastern Band of Cherokee, North Carolina; Karen Artichoker, Program Coordinator, South Dakota; and Elizabeth Little Elk Garriott.

[Witnesses sworn.]

Senator DECONCINI. John Lewis is here from Arizona. We are glad to have you with us, Mr. Lewis, any time.

Ms. Soller.

Ms. SOLLER. Thank you, Mr. Chairman.

STATEMENT OF ELIZABETH LITTLE ELK GARRIOTT, SOCIAL WORKER

Ms. SOLLER. I'd like to start with Elizabeth Garriott.

What is your background in dealing with tribal social services?

Ms. GARRIOTT. I used to be the child welfare director for my tribe, which is the Rosebud Sioux Tribe.

Ms. SOLLER. How long were you there?

Ms. GARRIOTT. I was there 5 years.

Ms. SOLLER. When you started working there in tribal social services how big was the department?

Ms. GARRIOTT. We had two social workers not including myself, and we had a budget of $42,000.

Ms. SOLLER. When you left how big was the social service department?

Ms. GARRIOTT. We had a staff of 11, including myself, and a budget of $393,000.

Ms. SOLLER. Was that department, at the time you left it, adequate to deal with all the social service problems on the reservation?

Ms. GARRIOTT. No; it wasn't.

Ms. SOLLER. What do you feel was not being met when you left?

Ms. GARRIOTT. I felt that, as the child welfare director for my tribe, I was constantly going from crisis to crisis. I could never make any type of long-range planning. I would have really liked to have had time to develop a comprehensive social service program for the tribe that would have included contracting child welfare services from the State. During the time I was there we contracted from the child welfare portion BIA.

Ms. SOLLER. Now, we've heard testimony that a lot of programs are being cut. How were you able to get the funding to build up your department?

Ms. GARRIOTT. A lot of hard work. I had to go out and get that information. The Bureau was not very helpful. I had to go out and get the technical information, myself. I was never given any kind of technical assistance.

Ms. SOLLER. Your have a master's in social work; is that right?

Ms. GARRIOTT. Yes; I have my master's in social work from Howard University in Washington.

Ms. SOLLER. What kind of services were you providing for children victims on the reservation?

Ms. GARRIOTT. We were mostly providing family counseling, family therapy, trying to keep families together, most of our funding came from the Indian Child Welfare Act, which is Title II. As I understand it, the budget used to be $8 million and now it is going to be cut in half to $4 million.

So the purpose of our program was to try to keep Indian families together.

Ms. SOLLER. Did you think there was a child sexual abuse problem at Rosebud when you were there?

Ms. GARRIOTT. Yes; I did.

Ms. SOLLER. Do you think there still is today——

Ms. GARRIOTT. Yes.

Ms. SOLLER [continuing]. or has it been corrected?

Ms. GARRIOTT. It has gotten worse.

Ms. SOLLER. You say that you are no longer working at the Tribal Social Services; is that right?

Ms. GARRIOTT. Yes.

Ms. SOLLER. Are you still in contact with social service needs on the reservation for children?

Ms. GARRIOTT. Yes; on a daily basis.

Ms. SOLLER. What are you doing now?

Ms. GARRIOTT. I am a social worker for a private foundation that just started on the reservation. We provide long-term foster care.

Ms. SOLLER. Are there currently ongoing programs at the grass roots level—non-governmental programs—that you feel are helpful in the dealing with child sexual abuse issues?

Ms. GARRIOTT. I think the increased knowledge of sexual abuse, and the state of social services in general, is getting attention on the reservation on a grass roots level. I think that there are groups that are forming and trying to decide how we can respond to these problems. I think we, as a society on the reservation, and as a Lakota Nation, do not have a grasp of these problems adequately. The problems are overwhelming.

I think we're beginning to see that it doesn't matter how much money we have or how much intervention we have by the tribal government, it is going to be up to us to be responsible to ourselves and to our children and to our families.

STATEMENT OF KAREN ARTICHOKER, PROGRAM DIRECTOR, COALITION AGAINST DOMESTIC VIOLENCE AND SEXUAL ABUSE

Ms. SOLLER. Ms. Artichoker, you are a member of the South Dakota Coalition against Domestic Violence and Sexual Abuse; is that right?

Ms. ARTICHOKER. Yes.

Ms. SOLLER. What have you seen happening out there in Indian communities that you think is helpful for the dealing with the problems of child sexual abuse?

Ms. ARTICHOKER. One of the things that our coalition did this past November was co-sponsor, with the Justice Department, a conference on violence in Indian Country. We feel it is really the first time that there has been the limelight placed on issues of violence where we could come together and, as grass roots people, talk about that.

A big part of our conference was the scholarship program, and we brought many, many women who had been in shelters, we provided day care, so we had some regular people that came to our conference. The energy was really exciting to see that people really want to understand what is happening in their communities. They want to know what is happening in their families. I can really see some leadership in the communities starting to come out.

Ms. SOLLER. Do you think that programs run by the Federal Government or the State government are sufficient to deal with the problems of sexual abuse on reservations?

Ms. ARTICHOKER. No.

Ms. SOLLER. What else do you think is needed in addition to outside-funded programs?

Ms. ARTICHOKER. Well, I think that, in concurring with what Elizabeth said, the answers have to come from within the community, and I think that the Federal Government and State government can support us in doing what we need to do to become a whole nation again, and that may include financial support.

The other thing that I think could happen that would be very helpful is that, in sitting and listening to the hearings I have heard a lot about the misconduct of government employees. I have a strong opinion that if the BIA or IHS expects Indian communities to set standards of behavior for their communities—because one of the things that we are saying is that the abnormal is becoming normal. People are becoming desensitized to violence and abuse and alcoholism, that it is no big deal any more, that's just the way life is.

If the Federal Government expects Indian communities to set standards, then that has to happen within their own systems because traditionally the way we raised our children was by role modeling. I think that it is very important that government agencies have a responsibility to conduct themselves appropriately.

Ms. SOLLER. At the community level is there training that is going on, or is there training that you feel is needed, that could begin the process of having Indian people involve themselves in treatment and recovery?

Ms. ARTICHOKER. I see that happening and I can't honestly say that the Federal Government is necessarily involved in that. Organizations like our coalition, where a community organization can request that I come and help them organize or provide training in whatever area they request, that kind of grass roots training I think is starting to happen.

Ms. SOLLER. Ms. Garriott, you have been here for the last day and have heard some mention about parent support groups that have gone on at Hopi and at Cherokee. Are there similar organizations or groups on an informal basis that are occurring in other parts of the country that you feel are helpful?

Ms. GARRIOTT. I don't know that. I think that on Rosebud and Pine Ridge that we're just beginning to do those types of things. But as far as a support group that is formed around sexual abuse, no.

Ms. SOLLER. Is there any need that you see in the system, Ms. Artichoker, for dealing specifically with child victims? What I'm thinking of is that there was someone on the earlier panel that spoke about the need for child advocates in the process. Do you think that there is a need to have community child advocates involved in the whole handling of child abuse cases?

Ms. ARTICHOKER. I think it is essential. You have a system that is extremely intimidating. You have tribal police, Bureau police, criminal investigators, FBI, all the way up the line, that is very, very intimidating. I have done some of that advocacy work with people, and I think there is a real need to develop that in a kind of more formal manner so that people will know who they can go to that can help them.

Ms. SOLLER. Do you think that should be a governmental process, or do you think it is better done from the community, or both?

Ms. ARTICHOKER. Both.

Ms. SOLLER. Ms. Garriott, are there any current programs that you know of that are directly funded by the Federal Government, or are they all funded through the BIA or the State?

Ms. GARRIOTT. BIA or the State.

Ms. SOLLER. Is there any change in the funding that you feel would be helpful to programs in Indian country?

Ms. GARRIOTT. I think it would be helpful if, rather than having to go through the Bureau and all the bureaucracy, that it would be most helpful, if as Indian Tribes we set the policy and guidelines. That we determine what are our problems and that we determine how to respond to these problems. That would be true self-determination. I know we have the capability to do it. I think we can do a better job than what is happening now. Let us prioritize our needs and help us to achieve the means to meet those needs.

I would like to see direct funding to certain groups on reservations—not necessarily the tribal government. There are concerned groups from communities that are willing to apply for some of these monies and that do have creative options, some of those options I think should include things like our traditional types of healing that we have that are very viable that do heal victims of sexual abuse or physical abuse or emotional abuse. These can be incorporated into the western form of therapy.

Ms. SOLLER. Ms. Artichoker, in your experience have the Federal Government funding organizations recognized the validity of some of these traditional forms of treatment or recovery?

Ms. ARTICHOKER. My personal experience is that Indian Health Service, who provides mental health services on reservations, or even the physical healing, that that is extremely threatening to those organizations. Even though they have a policy in place saying that they are supposed to honor Indian tradition, my personal experience in working as an IHS employee was that for the most part, outside of a few sensitive individuals, that was very threatening for people.

Ms. SOLLER. Do you know of any proposals that have been made for funding that are acceptable and in keeping with traditional healing methods that have not been recognized by the BIA? Or has the BIA been open to such proposals?

Ms. ARTICHOKER. I don't know about the BIA, but I am aware of one proposed program that is being demonstrated in a school in North Dakota, and in seeking funding to replicate the program in other schools the Department of Education told the applicant that the program wasn't creative enough.

Ms. SOLLER. What kind of a program was it?

Ms. ARTICHOKER. It's called the "Heart Room," and it is a program for elementary children. It is a survival skills program to teach children how to start a wood stove because we have had some children that have burned in house fires trying to start the stove. It would provide, especially on Thursday and Friday when there might be heightened anxiety about what might happen over the weekend, the children with support, teach them what they should do, what they could do, what their options were if somebody tried to touch them inappropriately or if it wasn't safe in their homes.

Ms. SOLLER. So it did have components of sexual abuse prevention in it?

Ms. ARTICHOKER. Yes, and my experience at a conference in having the program presented there was that Indian people were very excited about it. They wanted to see it in action. The comments were that they need to have that in their school. So it was real disappointing to be told by the Department of Education that the program wasn't appropriate or creative enough.

Ms. SOLLER. Mr. Chairman, I would have no more questions of these witnesses, but they do need to catch a plane to get home and I would offer them for further questions so that they can be excused.

Senator DECONCINI. Thank you.

Senator Daschle, do you have any questions of these witnesses?

Senator DASCHLE. Under those circumstances, Mr. Chairman, no.

Senator DECONCINI. I thank you.

Senator DASCHLE. I would, if I might, just welcome both of them. I know how dedicated they are. My staff has been in consultation with them, and we were hoping we might be able to work out an arrangement where they could talk to all of our tribal chairmen this week. I appreciate your willingness to at least make the effort at scheduling that, and understand why you have to go back. But thank you for coming.

Senator DECONCINI. We do regret holding you over here from noon, but we appreciated the testimony. It was very helpful. Thank you.

Senator DECONCINI. Mr. Anderson.

Mr. ANDERSON. Thank you, Mr. Chairman.

STATEMENT OF ROXANNE HOWARD, JUVENILE INTAKE/COURT COUNSELOR, EASTERN BAND OF CHEROKEE, NORTH CAROLINA

Mr. ANDERSON. Continuing the questioning of this panel, would you please give us your educational background and your current position at the Cherokee Tribe.

Ms. Howard.

Ms. HOWARD. My name is Roxanne Howard, and I am working for the Eastern Band of Cherokee Indians in Juvenile Intake Services. What I do is screen complaint forms of juveniles that are alleged to be delinquent and undisciplined, juveniles, 6–15 years of age.

I have a master's degree in social work and a bachelor's degree in social work.

Mr. ANDERSON. Is your position funded by the tribe, and are you a part of the tribal government?

Ms. HOWARD. Yes; I am. It is totally being funded by the tribe, and until just recently it has been me, myself, doing all of it. I just got another person to help me.

Mr. ANDERSON. How many juveniles would be at the Cherokee Reservation at this time?

Ms. HOWARD. I'd say there are about 2,078 living on the reservation.

Mr. ANDERSON. What would your work involve with juveniles who are referred to you?

Ms. HOWARD. That would be screening the complaint forms and trying to provide and connect the juveniles and their families with community resources. If it is not possible to connect them with the community resources, and depending on the severity of the case, I would make a determination as to whether or not the alleged delinquent act or undisciplined act is serious enough to come to court.

Mr. ANDERSON. If a complaint comes in about a juvenile accused of sexual molestation, what role would you have in cases like that?

Ms. HOWARD. In a case like that our court system operates under title 25 of the Code of Federal Regulations, and we have no jurisdiction over those cases, so I would automatically contact the FBI, law enforcement, or Social Services, and the case would be turned over to the Federal Government.

Mr. ANDERSON. How has that worked at Cherokee?

Ms. HOWARD. Well, I think one of the problems that we have had is that once a case is finally reported there is a lag in the time where the investigation is done until the time the cases are prosecuted. In the meantime, I can't do anything as far as providing any type of services to the alleged offenders, mainly due to the fact that it is within the jurisdiction of the Federal court.

Mr. ANDERSON. How long would this period of time be when you are not in a position to be able to do anything with the offenders?

Ms. HOWARD. It would start as soon as the problem has been identified. I have no hands-on abilities to work with that case.

Mr. ANDERSON. How long could that situation last until you actually have the ability?

Ms. HOWARD. Years. It could last years. With that problem in mind, it is very difficult to try to provide services to these people, especially the juvenile offenders. I have a specific interest in them in that there is nothing that our court system can do. Social Services usually is involved, Smokey Mountain Mental Health—you heard from Betty Shiek earlier, and she sometimes is involved—law enforcement, the FBI.

Once they do their investigation we seem to experience the most lag in time in that the FBI does their investigation and then that case is transferred to the U.S. attorney, who lives 1 hour away in Asheville, NC, and that is where it seems to get caught. It could stay there 1 year, 2 years, 3 years, even up to 5 years, and after 5 years we have a problem with the statute of limitations.

Mr. ANDERSON. What are the practical consequences of the failure to be able to treat the juvenile without the FBI or having the juvenile convicted? Are you aware of any practical consequences that are going on now that you can tell us about?

Ms. HOWARD. The problem is that we can't provide services. We can't provide service to the juvenile sexual offenders or the adult offenders on the reservation. We have no services that are available. We have services that can protect the children through Social Services or law enforcement. They can get medical services through the hospital. But that's about the extent of it. We don't have a licensed child examiner at the hospital to do those kinds of examinations. We have no therapeutic or counselling services available on the reservation. So there is really basically not a whole lot we can do.

As you heard earlier, the best and most effective way to try to treat sexual offenders is if you have some type of court mandate ordering them to participate in that type of out-patient treatment.

Mr. ANDERSON. Could that lack of a mandate in fact lead to perpetrators being nearby the victims?

Ms. HOWARD. Absolutely. We have got cases right now in Cherokee. I know of five juvenile offenders who are out in the community right now. In one case it was a case where we had a young girl who was about 12, and she was a victim of a gang rape. There were three perpetrators that were involved in that case, and they live right across the road from her. We can't detain them, we can't put them in any type of Federal detention facility for committing those crimes—the alleged crime, anyway. Our closest facilities are in Atlanta and West Virginia.

Mr. ANDERSON. Are those perpetrators living across the street from this victim today?

Ms. HOWARD. Yes; they are. I talked with the mother just recently before coming up here. Every day they live with this sense of insecurity. They have had cases where—this happened 1 year ago that it was investigated, and since that time they have had peeping Toms, they've had vandalism, they've had the perpetrators giving them piercing stares. Every day is filled with so much torment for them.

Mr. ANDERSON. Have these perpetrators voluntarily asked for treatment from you?

Ms. HOWARD. No; they haven't.

Mr. ANDERSON. Without voluntarily coming forward there is no ability on your part to get them into treatment; is that correct?

Ms. HOWARD. Exactly.

Mr. ANDERSON. I have no further questions.

Ms. Soller.

STATEMENT OF MARGARET ALLEN, CHILD WELFARE SUPERVISOR, GILA RIVER INDIAN COMMUNITY

Ms. SOLLER. Ms. Allen, you were working with the Social Service Department at Gila River, is that right?

Ms. ALLEN. Yes.

Ms. SOLLER. Is that a tribally-run social service department?

Ms. ALLEN. We are tribal, yes.

Ms. SOLLER. Unlike at Cherokee, Gila River has a tribal court; isn't that right?

Ms. ALLEN. Yes; we do.

Ms. SOLLER. Does that take care of the problem you have with juvenile offenders?

Ms. ALLEN. No.

Ms. SOLLER. Why not?

Ms. ALLEN. Well, at Gila River we average in our child protective services program—last year we had 211 child protective services complaints. About 50 percent of those were substantiated. So within the last 12 months we have identified 16 perpetrators.

Ms. SOLLER. Sex offense perpetrators?

Ms. ALLEN. Sex offense perpetrators. Of those six, two of those have been clinically diagnosed as teen pedophiles.

Ms. SOLLER. For most of these, is it your experience that some treatment might be available for them?

Ms. ALLEN. Yes; some treatment might be available, and then the cost and payment issue of what should happen is always the question.

Ms. SOLLER. Does the tribe, itself, have the ability to provide direct treatment for these pedophiles?

Ms. ALLEN. Tribal social services, under our 638 BIA contract, is not to be providing any type of mental health or therapeutic treatment.

Ms. SOLLER. Do you know whether or not, in the case of these six sex offenders, these children were molested at an earlier age?

Ms. ALLEN. I know that four of them were.

Ms. SOLLER. What services are available for the treatment of these young men or boys?

Ms. ALLEN. In Gila River, tribal social services I think does some creative types of treatment. We were able, in one case, to, after I made 22 phone calls, talk to 6 different IHS and BIA officials, and spent well over 5½ weeks attempting to do it. I was able to talk the IHS service unit in Phoenix to pay for half of a 30-day offender's treatment program in Phoenix.

Ms. SOLLER. IHS does have some role in the treatment of children who are in need of services; is that right?

Ms. ALLEN. I believe that's true, yes.

Ms. SOLLER. What is their position?

Ms. ALLEN. They are residual payee, and all other resources must be exhausted before they will even talk about the possibility of treatment.

Ms. SOLLER. IHS, to your knowledge, is the one with the mental health care mandate; isn't that right?

Ms. ALLEN. That is my understanding. Yes.

Ms. SOLLER. So why can't you just go straight to them if you have a child who is in need of mental health care?

Ms. ALLEN. Because they are a residual payee and I have to prove that I have exhausted all other facilities and abilities to pay. The facilities they will give to me, if I can prove that the child's problem is a mental health problem as opposed to a behavior disorder or a juvenile delinquency issue, is that they will offer a 30-day alcohol detox treatment program, which I have had four children in. Two of them were so severely alcohol impaired that they were unable to stay at the treatment program for more than 10 days and they were discharged. They will give me a 10-day acute mental health hospitalization. After 10 days the child is viewed as no longer being acute and it is no longer IHS's problem.

Ms. SOLLER. Have you had children who have acute problems because of abuse that has occurred to them?

Ms. ALLEN. Yes.

Ms. SOLLER. Do you consider that their condition was no longer acute after ten days in a facility?

Ms. ALLEN. With one specific case that was not true. A child was on a second hospitalization for a 10-day acute. He was still homicidal, was still suicidal according to the treatment people at the hospital. He was also one of the children who had been designated as, when he turned 18, would be an adult pedophile. He was still very much suffering from psychosis and also hallucinations.

We had a meeting with an IHS psychologist, myself, and the staff at the hospital, at which point I was told that IHS could no longer pay for this care and as far as they were concerned he was no longer acute, and that if social services from the tribe was unable or unwilling to pay for any further treatment residentially for this child that their opinion was he needed to be returned to the community, even knowing that he had stated clearly to hospital staff that once he did return to the community he would be perpetrating the young female children he had perpetrated a few weeks before.

Ms. SOLLER. So what happened to that case?

Ms. ALLEN. Social Services became a creative funding agent and we were able to get him placed in a residential facility.

Ms. SOLLER. By "Social Services" you mean tribal or BIA?

Ms. ALLEN. Tribal social services. We are a 638 BIA contract social service program.

Ms. SOLLER. Are you aware of programs in other areas where tribal social services has felt that they were constricted by the rules and has had to come up with unique or unusual classifications of cases in order to get treatment when it is needed?

Ms. ALLEN. Yes; I am aware. One of the guidelines that we have is that social services, under a 638 BIA contract, is not allowed to pay for cost of therapeutic or mental health services because the Bureau maintains that those are IHS issues. So what happens typically on some programs is that we can pay for cost of care in a residential facility, so what might happen is that a child may have a very clear mental health problem, but in order for payments to be made through social services it is possible to have the diagnosis altered so that it looks as though it is a cost of care payment as opposed to a mental health payment.

Ms. SOLLER. So whose position, between IHS that says that you have to exhaust everything else, and BIA that says that are not mental health care, who is supposed to handle the mental health care and therapy needs of young children who have problems because they have been sexually abused?

Ms. ALLEN. After several conversations with both IHS and BIA officials I have never been able to determine that. What happens oftentimes, I think, particularly with the social services programs I am familiar with, is that the tribal social services programs end up doing that.

Ms. SOLLER. Rather than the Federal Government in either agency?

Ms. ALLEN. Yes.

Ms. SOLLER. Does the tribal social services program have the money to deal with that?

Ms. ALLEN. Currently at Gila River I have 22 children who are in residential placement; 4 of those are perpetrators. Many of the other remaining children—the 18 children—probably have been perpetrated and certainly have been molested and are in care. No, we don't have the financial resources to maintain it. I am only supposed to be carrying 18 children in care on a monthly basis.

Ms. SOLLER. You have how many?

Ms. ALLEN. We have 22.

Ms. SOLLER. How does your program compare, do you think, to that of other tribes? Is it typical of other tribes? Are you better off? Are you worse off?

Ms. ALLEN. Gila River has a very sophisticated tribal social services program. My experience has been as a trainer. The other thing is that the State of Arizona—through Intertribal Council of Arizona we have developed a child protective services training program and curriculum. We have run four classes now for the tribes in Arizona, and have graduated over 80 students who have gone through approximately a 64-hour training program in child abuse and neglect. We have modeled it after the State of Arizona's core curriculum for their CPS workers, and so I have a chance at that point to review tribal codes of tribes of Arizona and also to review Child Protective Services programs.

Gila River was one of the first, and is still one of the few tribes in Arizona that has a specific child protective services unit that does nothing more than take in child protective services complaints, investigate those complaints, and to come to some kind of conclusion as to whether or not to provide additional services, close the case, or assist with law enforcement and our law office in order to prosecute.

Ms. SOLLER. So if BIA Social Services says it is not within their mandate, and IHS says they are the absolute last resort, and a tribe does not have the sophisticated social service department that Gila River has, what happens to the children?

Ms. ALLEN. They do not get served.

Ms. SOLLER. Now, you mentioned the CPT training that has gone on, and I guess that is through Mr. Lewis' organization; is that correct?

Ms. ALLEN. This is Rod Lewis, and he is the tribal attorney for Gila River. His brother, John Lewis, is the director of the Intertribal Council of Arizona.

This started about 2 years ago, and it is through Arizona State University, the State of Arizona. The BIA Phoenix office has put some money together to pay for scholarships for tribes who haven't the money to send people to two weeks' worth of training, and myself, and I am the primary facilitator for the program.

Ms. SOLLER. What do you think that has done to the ability of tribal CPTs to function? Do you think it is going to help?

Ms. ALLEN. Well, we don't train the child protection teams, and there is a real clear distinction between the two. The intent is to help tribes set up child protective services unit within the tribe, and we have done that. We have enlightened, trained, and informed a number of workers who are out there on the line from the tribe who are supposed to be investigating child abuse and neglect reports who have no skills in that area. So I end up training everyone from police officers to the tribal police officers and Bureau police officers. We have had tribal council people in the training program. I end up with child welfare workers, which is the model typical in Arizona where you have a generic child welfare worker who investigates child abuse, does ongoing child welfare work, and mops the floors if it has to happen within their particular area. So it is pretty much a generic model.

One of the things we have been trying to establish is that each tribe needs to have specific workers who do specific child protective services investigations.

Ms. SOLLER. Are these initiatives because of the Federal Government's recent push to have CP teams in each agency?

Ms. ALLEN. No; Gila River discovered child abuse and neglect around 1983, so the startling discovery of IHS and the BIA in 1986 and 1987 that there was child abuse in Indian country was a little late. We have been doing this—I first enacted the first training program in 1986 on the San Carlos Reservation where they do have one child protective services worker who does investigate CPS.

Prior to the discovery of IHS and the BIA about child protective services and the issues of child abuse and neglect we couldn't sell them a child abuse and neglect case.

Ms. SOLLER. Can you now?

Ms. ALLEN. They are very willing to gather our statistics. We do have a protective services team at Gila River. I have a number of concerns. One of those happens to be that they are very interested in gaining names and gaining lots of numbers, and I do not feel that unless the people on that team have a direct interest and/or need to know the information contained that it is not appropriate for us to take anywhere from 20 to 30 families a month that we interview for CPS referrals and give that name and information to a group of people who may not necessarily have any interest in the case.

Ms. SOLLER. One last area. If you have young children who are in need of treatment and are not getting it, you say that you are seeing them come back as perpetrators, at least in some cases; is that right?

Ms. ALLEN. Yes.

Ms. SOLLER. Well, if there isn't any treatment do you have the facilities to just incapacitate them to detain them and keep them out of the community?

Ms. ALLEN. We have a detention facility at Gila River. We do not use that facility in that way. At Gila River most of the time we will intervene through social services and place the perpetrator and/or the victim in residential care or foster care if that is what they need. We also have done some creative funding, and we have innumerable funding sources for our child protective services and also our social services program at Gila River.

I have contract consulting therapists who come from Phoenix who are available to do very specific kinds of therapeutic intervention with molested families. Part of our intent has been to develop that program so that we do have resources. As I said, we have a number of funding sources, so part of my job has been to write those grants. In fact, I finished six of them prior to coming here.

Ms. SOLLER. How much of your time is spent writing requests for further funding?

Ms. ALLEN. The entire month of January and February on an annual basis.

Ms. SOLLER. If you weren't doing those grant requests seeking additional funding what would your time be spent on?

Ms. ALLEN. Supervising the child welfare unit.

Ms. SOLLER. Senator, I have no further questions.

Senator DECONCINI. Ms. Allen, how many people are on the team that you talked about?

Ms. ALLEN. On our child protective services team?

Senator DECONCINI. Yes.

Ms. ALLEN. We have two child protective services workers who directly work out of the child welfare program. We also team up with our Federal investigators through the BIA and with the law office attorneys.

Senator DECONCINI. Maybe I'm misinterpreting. Is there a team? Is there a group? Each one of those is a team leader or are they the team?

Ms. ALLEN. There is an IHS/BIA mandated CPT team on the reservation. Our CPT team does not investigate child abuse and neglect. That IHS/BIA program does not do investigations. What happens is that it is the law enforcement, it is the tribal attorney's office, and it is tribal social services who do the actual investigation, the ongoing investigations, bring the case to trial, and then social services provides the after care.

The CPT team on Gila River in the BIA/IHS mandate simply listens to our cases when we bring them in and sometimes gives us verbal input and then they go home.

Senator DECONCINI. Your child protective organization is two people, then?

Ms. ALLEN. Our CPS staff is two workers.

Senator DECONCINI. Two workers?

Ms. ALLEN. Yes.

Senator DECONCINI. How is that funded?

Ms. ALLEN. We have two positions. One of them is out of our 638 BIA contract, and the second position is a position from our title XX funding.

Senator DECONCINI. How many do you need, in your professional judgment?

Ms. ALLEN. We have a large number of cases. We have more than most tribes, maybe because we keep better statistics or perhaps because we are more well-known in the community. I don't have as many issues with us finding and substantiating the issues of child abuse and neglect. Our two workers do a good job with that. The issues that come up for me are in the after care part of it when I have no services available and I spend a lot of my time on the phone——

Senator DECONCINI. Trying to find them?

Ms. ALLEN [continuing]. Trying to find them, trying to bargain and bicker with my counterparts in the State of Arizona to get them to——

Senator DECONCINI. You could use a full-time person for that, or more?

Ms. ALLEN. At least for that. Yes.

Senator DECONCINI. Well, thank you very much. I know of some of the work you do on Gila River, and it is at least rewarding from this Senator's point of view that there is some service there for child protective services. Do you know what other reservations, by any chance—or maybe Mr. Lewis does—have child protective service units?

Ms. ALLEN. Salt River has a unit, Tohono O'odham Nation has a unit. Those are the three that currently carry a CPS unit. As I said, as we do more of the training I think that we will see more of those units being established. Part of it, I know, is a resource issue on the part of the tribes.

Senator DECONCINI. Out of 20 tribes, of course, some of them are very small and they don't have the resources?

Ms. ALLEN. It is very hard to dedicate one person's time to just doing CPS.

I do have some recommendations if I might have some time to talk about those.

Senator DECONCINI. Go right ahead.

Ms. ALLEN. My first very radical one is that I'd really like to see the full implementation of the 638 Indian Self Determination Act in Indian country. I think that we need to clearly look at backing the BIA and IHS out of Indian country. I think that would be a good recommendation.

Senator DECONCINI. If that were done—and I tend to agree that needs to be done—what would you suggest? Do you have any recommendations for the accountability of the program and the funds?

Ms. ALLEN. I think it is important that—and we do at Gila River—we directly fund with a lot of different agencies. We fund with the Federal Government through Health and Human Services, and we also have State grants. I think that there needs to be a lot of training in Indian country on how to be accountable, and I think that it is very important that that accountability happen, and I think that there needs to be some kind of a very clear time line set up about how long it would take, and I think 15 years is probably not an unrealistic time line to look at to look at that total backout.

Then my other concern is that as they back out that the dollars not go out with them, because those moneys we're seeing in Arizona, I think we have more cooperation from the State of Arizona than most areas do in that they are having to pick up and assist us a great deal.

My other recommendation is that, in looking at a Federal reporting law, I think that is very important. I think you have heard pros and cons with that, and that people may or may not report and there may or may not be any types of sanctions against people who don't report. But I think that clearly is an idea to look at.

Senator DECONCINI. It is your suggestion that we have something at least similar to what the State of Arizona would have?

Ms. ALLEN. Yes; very much so.

And the other thing I wanted to say to you is that in reviewing the tribal codes from the different tribes across the State of Arizona all but two of them do have a mandatory tribal reporting statute.

I think it is very important that you clearly look at some moneys for training—good, comprehensive training for staffs across the board.

One of our issues at Gila River, particularly with our Bureau investigators, is that depending on which investigator may get the case depends on how well it will work, and oftentimes the Bureau investigators do not have the skills or the ability or the interest to tackle child abuse and neglect issues. You have to be a very specific type of person to have an interest in doing that, and for some people it doesn't work, and I don't think the Bureau is very selective in attempting to do that.

But also for tribal and all employees that are going to be working with that area there needs to be some clear training.

It is also very important that we have local dollars available to tribes that we can contract for to provide those services after we have detected child abuse and neglect. We can get the numbers, we can get the cases, but if we have no moneys to provide services—and one of the panelists alluded to the reduction of the ICWA moneys, and I clearly think that is an inappropriate move because most of the ICWA funds are used to support services to Indian communities, and those ICWA moneys come for that and there are no other funds available to do supportive programs, and I think it is very clear that we need to see that there are those after care moneys available to Indian tribes. I am very concerned about that concept of cutting those ICWA moneys.

I think the other thing is that if the BIA is going to continue as the law enforcement agency for tribes that they need better training—clear training in the area—so that they understand what they are looking at.

That's all I have. Thank you.

Senator DECONCINI. Thank you very much. I have no further questions.

Senator Daschle.

Senator DASCHLE. Mr. Chairman, I only have one question that I think Ms. Allen has probably already answered in her answer to you about self determination.

I would, just for the record, be interested in your comment with regard to where the problem lies with IHS and BIA. Obviously, a big part of it appears to be lack of resources, lack of adequately trained staff. But I sense from what you are saying that a big part of it, too, is attitudinal, that they will do whatever they can to avoid taking responsibility with regard to these difficulties that go way beyond resources. Sometimes even with a lack of resources where there is a will there is a way. But you appear to be telling us that there is absolutely no will. Would you care to comment about that?

Ms. ALLEN. I think one of the things I have been told at a recent meeting is that when you work with Indian people you have to understand that they are usually not the kind of people who are going to get up on top of a table and scream and yell about violations of their rights because they have gone through many, many, many decades of being beaten down, of being told that this is not their business or their problem, we will take care of you. So there is a lot of learned dependency.

Unfortunately, the BIA and IHS staff, as a whole—there are a few exceptions—feed very clearly off of that dependency. I have had clients who have gone to the hospital for services who have been treated incredibly rude. I could not believe that they would be treated like that—yelled at, told that they were stupid for entering into the IHS hospital for care and treatment. When I have gone back with them to demand better treatment, suddenly things change.

The view of the Indian people by IHS and the BIA staff is appalling, and they feed off of the Indian people's quietness and I think a lot of their learned dependency.

So no, I don't see that there is a very clear will on the part of IHS or BIA to make any changes in any of the kinds of programs or services they provide to Indian people. And for years no one has ever looked at them. So I think they must be in total shock by this panel of this select committee because for the first time people are starting to hear about the atrocities they commit in Indian country, and for years no one has ever looked at them. The Indian people are not the people who are going to get up here and scream and yell and write to you and say this is happening and this is wrong. I am very proud and very thrilled that there have been so many people who have come forward and told you how it is to work in Indian Country, because all they have said to you we experience daily on all of the reservations.

I don't see that IHS or BIA are in any position to change. They are trying to get their 20 years in and they are going to leave. That was when I told you if we gave them 15 years then all of those that have been there could get their 20 years in and get their retirement. I think it would be appropriate for the Indian tribes to take over their own destiny, and I think the Indian Self Determination Act needs to be implemented because we are not getting any better services from those two agencies, and that's real disgusting.

Senator DASCHLE. Thank you.

Senator DECONCINI. Thank you very much. We appreciate your testimony. Thank you, Mr. Lewis.

Our next panel will be: Robert Delaware, Acting Chief, Social Services, BIA, Washington, DC; Linda Guy, Social Services Specialist, BIA Washington, DC; and Albinito Atencia, Social Services, BIA. Would you all please come forward?

[Witnesses sworn.]

Senator DECONCINI. Ms. Soller.

Ms. SOLLER. Thank you.

STATEMENT OF ALBINITO ATENCIA, SOCIAL SERVICES, BUREAU OF INDIAN AFFAIRS

Ms. SOLLER. Ms. Atencia, I'd like to start with you, if we could. You are a BIA Social Service worker in the field; is that right?

Ms. ATENCIA. Yes; I am.

Ms. SOLLER. Where do you work and what do you do there?

Ms. ATENCIA. I work for the eight northern tribes located in Santa Fe, New Mexico.

Ms. SOLLER. What tribes does this cover?

Ms. ATENCIA. Tribes are Taos, Picuris, San Juan, Santa Clara, San Ildefonso, Nambe, Pojoaque, and Tesuque.

Ms. SOLLER. What exactly is your function in BIA Social Services.

Ms. ATENCIA. I deal specifically with child protective services.

Ms. SOLLER. Now, recently you were called to Washington to be a part of a forum with BIA and IHS; is that right?

Ms. ATENCIA. Yes.

Ms. SOLLER. At that time you voiced some specific concerns you have about the field, and I'd like to just go through those if I may.

The first one you said is that you believe that your case load was too high to allow you to do your work in the field; is that correct?

Ms. ATENCIA. That's correct.

Ms. SOLLER. Can you explain what you mean by that in more detail?

Ms. ATENCIA. Yes, I am the only child protective service worker for eight communities, and we serve approximately 7,651 people. Out of that population I would say that there is about 50 percent or more children in these communities. I am the only social worker that is out in the field doing protective services.

Many of our tribes do not have 638 contracts in place. The only 638 contracts that are operated within the eight Northern Pueblos Agencies are the tribal court systems.

Ms. SOLLER. What is the relationship that you have with IHS in the provision of services to the communities you serve?

Ms. ATENCIA. We supposedly have a Memorandum of Agreement between IHS and BIA Social Services to provide services to the Indian communities.

Ms. SOLLER. Is that agreement working to actually provide services?

Ms. ATENCIA. No; it is not.

Ms. SOLLER. What are the problems?

Ms. ATENCIA. The problems run both ways—BIA and IHS. IHS refuses to pay for any services that are needed for outside placements, like if a child needs to be placed outside the home in a group home facility for residential care or other care they are not willing to assist the BIA in providing these services.

Many of our children have dual diagnosis when they do go in as a referral case. Many of them—I would say more than 50 percent of our case load—deals with alcohol abuse or drug abuse.

Ms. SOLLER. What has the response been of the IHS in providing physical care—examinations and physical observations—when a child sex abuse case comes in?

Ms. ATENCIA. I believe that they have been giving inadequate services in terms of physical examinations. Physical examinations are not done to the fullest extent, and a few of our——

Ms. SOLLER. What do you mean by "not done to the fullest extent"?

Ms. ATENCIA. Well, we have had several sexual abuse cases that have come into IHS where we have asked for full examinations and they have been given partial or no examination at all.

Ms. SOLLER. What has this done to the child or to the case?

Ms. ATENCIA. I beg your pardon?

Ms. SOLLER. What has it done to the child or the case if there is only a partial exam done?

Ms. ATENCIA. The child loses a lot of confidence in the system—both systems—and they feel that they are not being adequately attended to.

Ms. SOLLER. Have you had any cases in which IHS has taken action involving children that you feel more appropriately should have been within BIA's province?

Ms. ATENCIA. What in specific?

Ms. SOLLER. Have you had any cases in which IHS has acted in a case involving a child where they have not informed the BIA?

Ms. ATENCIA. You mean inappropriately?

Ms. SOLLER. Yes.

Ms. ATENCIA. Yes; we have. Most recently we had a 16-year-old girl who was referred to the IHS facility for treatment. Evidently this girl was having problems in the group home facility where we placed her and was referred for treatment through the IHS program. During hospitalization she was diagnosed and assessed to need in-patient care with the psychiatric hospital in Albuquerque. At that time IHS did not contact BIA Social Services who had supervision over this girl and was under the wardship of the tribal court.

At that point the group home facility then contacted our office to ask our assistance in trying to stop this. When we tried to intervene on her behalf we were told that IHS was not going to adhere to the tribal court order, so at that point we then contacted the local tribal court who then contacted IHS and told them that they had better adhere to this, and so at that point they did.

What happened then was that the child was referred only for a 10- to 14-day evaluation. When the child refused to go or did not go IHS refused further services to this girl.

Ms. SOLLER. On what basis?

Ms. ATENCIA. On the basis that she did not go for the evaluation.

Ms. SOLLER. Was she still in need of further services?

Ms. ATENCIA. Yes; she was.

Ms. SOLLER. Did they attempt to schedule a second evaluation?

Ms. ATENCIA. No.

Ms. SOLLER. Did they attempt to find out why she hadn't gone and to try to work with her?

Ms. ATENCIA. No; they didn't.

Ms. SOLLER. Was she in need of services?

Ms. ATENCIA. Yes; she was.

Ms. SOLLER. What has the attitude of IHS been in your area toward participation in the child protection team?

Ms. ATENCIA. Under what they call the "Memorandum of Agreement" supposedly in place right now they have specific things of role responsibilities of the BIA and the IHS staff. Part of it is the CPT guidelines supposedly that were to be developed. That hasn't been done. Participation by IHS staff to coordinate the CPT program has not been done. They don't show up for meetings. They expect BIA to do all the presentations and do the ongoing planning for children. They are not really supportive.

Ms. SOLLER. What is your relationship then with law enforcement?

Ms. ATENCIA. We also have, I guess, a poor communication with law enforcement.

Ms. SOLLER. In general, what kind of law enforcement services exist in your area? Is it tribal, BIA, or FBI?

Ms. ATENCIA. We have BIA and we have tribal.

Ms. SOLLER. When you say that you have had poor communications, who is that with?

Ms. ATENCIA. I'm talking specifically about BIA law enforcement. We do have BIA law enforcement within our agency that we supposedly are to coordinate services with. What has happened in some of our experiences is that law enforcement has some reluctance, I guess, to attend tribal court hearings. They refuse to attend.

Their investigations on sexual abuse are done inadequately because they are not trained in that field. They do the criminal investigations according to their guidelines or their process, but as far as sexual abuse cases they are not being done adequately.

Ms. SOLLER. Do they cooperate in the prosecutions in tribal court?

Ms. ATENCIA. In some cases, yes.

Ms. SOLLER. Do they come willingly to court?

Ms. ATENCIA. No; they have to get subpoenaed.

Ms. SOLLER. Have you discovered through your contact with child sex abuse cases that there have been some cases that have been investigated or brought to law enforcement's attention for a while and have not been adequately followed?

Ms. ATENCIA. Yes; we have many cases that are still standing from years back. As a matter of fact, until I came to this particular agency there were cases that were pending from 5, 6, and 7 years back which have never been dealt with.

Ms. SOLLER. In child sex abuse cases?

Ms. ATENCIA. Yes.

Ms. SOLLER. Has the child received any services during this time?

Ms. ATENCIA. No; again, there is reluctance by the tribal court systems to act on these cases. They don't act on them appropriately.

Ms. SOLLER. During this time, have the perpetrators been removed in any way or kept from perpetrating again?

Ms. ATENCIA. In two particular cases within two tribes the perpetrators were protected by the tribes and are still living in the homes.

Ms. SOLLER. Have you found that, in general, BIA Social Services has been equipped or been ready to deal with the issues raised by child sex abuse cases?

Ms. ATENCIA. What in particular are you talking about?

Ms. SOLLER. Is it an agency that you feel has a particular direction toward child abuse cases? Or is it directed toward some other activity?

Ms. ATENCIA. Right now we are focusing and emphasizing on child protective services. In the past the emphasis has always been in the general assistance area.

Ms. SOLLER. By general assistance what do you mean?

Ms. ATENCIA. Financial assistance to the tribes.

Ms. SOLLER. So by providing welfare payments——

Ms. ATENCIA. Welfare payments. Right.

Ms. SOLLER. All right.

How long, in your experience, in your area, has there been any recognition or any ability to deal with child sex abuse problems?

Ms. ATENCIA. I think the abilities are there, but it has never been implemented effectively. It has been implemented, but not effectively.

Ms. SOLLER. Now, you have talked about some of the problems in dealing with child sex abuse cases. Is there any area in which there has been good activity?

Ms. ATENCIA. Within some of the Pueblo Tribes—we have 19 tribes—some of the Pueblos have developed tribal children's codes, and some of them are in place right now. Some of the tribes have also developed State tribal agreements. In one particular tribe where I worked as a 638 worker I helped the tribe to develop a children's model code and also a State tribal agreement, but it hasn't been adopted by the tribe.

Ms. SOLLER. Is the system that is currently in place adequate, in your opinion, to deal with juvenile offenders?

Ms. ATENCIA. I think that the system in place is good, but it is not really adequate. I wouldn't call it adequate because of the lack of staff.

Ms. SOLLER. Are there services available for the treatment of young sex offenders?

Ms. ATENCIA. No; not within the BIA system. We do have resources, I guess funded through the State and other small programs, where we utilize their services for dealing with sexual and child neglect and abuse cases.

Ms. SOLLER. Are there services in place that you feel are adequate to deal with the problems of child sex abuse victims?

Ms. ATENCIA. Not within the IHS or BIA systems. No.

Ms. SOLLER. Mr. Delaware and Ms. Guy, I'd like to turn to you at this point.

STATEMENT OF ROBERT DELAWARE, ACTING CHIEF, SOCIAL SERVICES, BUREAU OF INDIAN AFFAIRS

Ms. SOLLER. Mr. Delaware, you indicated that you are the Acting Director of Social Services; is that right?

Mr. DELAWARE. Yes, ma'am; I have been acting since December 5, 1988.

Ms. SOLLER. How long do you expect to be in that position?

Mr. DELAWARE. The detail will end March 3.

Ms. **Soller**. Did you have a background in social services before you were placed in the director position?

Mr. **Delaware**. Not within the BIA, but I am chief of the Employment Assistance Program, which works with Indians 18 to 35 who need vocational training, and those Indians who have a job skill that we assist by placing them into employment. A number of these are welfare recipients.

Ms. **Soller**. But had you had any background at all in the handling of child sex abuse cases or child abuse cases, in general?

Mr. **Delaware**. No, ma'am.

Ms. **Soller**. To your understanding, when was the last time the Bureau of Social Services had a permanent director in place?

Mr. **Delaware**. I'm the sixth Acting chief, since August 1986.

STATEMENT OF LINDA GUY, SOCIAL SERVICES SPECIALIST, BUREAU OF INDIAN AFFAIRS

Ms. **Soller**. Ms. Guy, how has this affected the operations of Social Services to not have any consistent leadership over the last 1½ years?

Ms. **Guy**. I think it creates a sense of lack of continuity because of the series of actors that we have had.

Ms. **Soller**. In the handling of child sex abuse cases is that something that is tolerable?

Ms. **Guy**. Do you mean the acting slots?

Ms. **Soller**. I mean the lack of consistent leadership.

Ms. **Guy**. In the handling of child sexual abuse cases is that something that is tolerable?

Ms. **Soller**. Is it tolerable to have inconsistent leadership at the head of an agency that is supposed to be charged with a large part of the handling of child sex abuse cases?

Ms. **Guy**. No.

Ms. **Soller**. Ms. Atencia has mentioned that she felt that there were not enough workers in her area in Social Services. Do you believe that there is an adequate number of Social Service workers employed by BIA and in the field?

Ms. **Guy**. No, ma'am; I do not.

Ms. **Soller**. What is being done if there is a shortage?

Ms. **Guy**. One of the things that we did recently: we received an add-on to our fiscal year 1989 Social Services base of $1.4 million for child protection workers, and we identified a need of 82 to 83 positions within the area offices and at the tribe agency level, but because of the dollar amount we were only able to fill about 42 or 43 of those positions. So that was a start.

Ms. **Soller**. Are there vacancies out in the field in social service positions before these extras were added on?

Ms. **Guy**. Yes, ma'am; there were.

Ms. **Soller**. Well, if you can't fill the vacancies in old Social Service positions, what difference does it make to get new ones?

Ms. **Guy**. One of the problems I think that we have in a couple of areas—and one, in particular—are recruitment problems. We can't seem to find qualified MSWs to come into—I'm going to use the Aberdeen area as an example. I think there are several reasons for that. But recruitment is a problem.

Ms. Soller. Has the Department, the Bureau, or the Division of Social Services made any effort to come up with any kind of creative way of recruiting Social Services workers for the BIA?

Ms. Guy. Not in the last recent years, but at one time we had a scholarship program in place when we tried to find and to send to school potential Indian staff who could work within our system. That hasn't been in place for the past couple of years, but it has been my recommendation to Mr. Delaware that we think about re-instituting this plan.

Ms. Soller. Mr. Delaware, from your understanding has there been any request by the Department to re-institute programs such as Ms. Guy just mentioned to increase the number of workers that are actually out in the field and not just the number of positions?

Mr. Delaware. To my knowledge nothing has been done formally yet. We have discussed a possibility of a cooperative type of program with Haskell Indian Junior College.

Ms. Soller. But nothing has been done?

Mr. Delaware. No; we actually just started talking about it.

Ms. Soller. Ms. Guy, you are currently working on the National Oversight Committee; is that right?

Ms. Guy. Yes, ma'am.

Ms. Soller. As I understand from testimony yesterday, there was instituted by the BIA a reporting policy in December 1987; is that right?

Ms. Guy. Yes, ma'am. That's true.

Ms. Soller. But you are aware that there were cases long before that came to the Bureau's attention in which the problems had been exacerbated by the failure of a Bureau employee to report up the line; isn't that right?

Ms. Guy. That is what I have heard.

Ms. Soller. Do you know why it took the Bureau years and years to get that reporting policy in place after these cases had come to their attention?

Ms. Guy. My experience has been that the first case that I was aware of personally was the Hopi situation in 1985 or 1986.

Ms. Soller. There has now currently been a policy on background investigations; isn't that right?

Ms. Guy. That's true.

Ms. Soller. That went into effect in November of this year, right?

Ms. Guy. Right.

Ms. Soller. Do you know why it took the Bureau, again, since the beginning of the 1980's when there were cases coming to its attention that showed that background checks were not being adequately conducted.

Ms. Guy. Why it took so long?

Ms. Soller. Yes.

Ms. Guy. I don't know that.

Ms. Soller. Now, this new policy on background checks, do you know whether or not this Memorandum of Understanding with IHS is working to the degree that there is the same background check being instituted by both agencies?

Ms. Guy. I don't think the IHS has a similar policy in place, but we do.

Ms. **Soller**. If there are different policies between the two agencies, how does the Memorandum of Understanding really serve to implement a coherent policy in the Federal Government?

Ms. **Guy**. I can't speak for the IHS, but I think for our side it is a start.

Ms. **Soller**. Mr. Delaware, are you aware of a case involving a social worker employed by the IHS at Standing Rock?

Mr. **Delaware**. I was just informed of that incident today at lunch time.

Ms. **Soller**. That is a case that has been in the system for some time, according to your understanding; isn't that right?

Mr. **Delaware**. Yes.

Ms. **Soller**. Do you think it is a problem within the leadership or the administration of Social Services that there is such a communication problem that you had not been made aware of this case?

Mr. **Delaware**. My just knowing about it today, can be attributed to the fact that I am only serving as acting chief and my detail will be ending soon, so why let him know anything about it.

Ms. **Soller**. Was it your understanding, from what you have learned, that, in fact, this IHS social worker was charged with sexual abuse, was allowed to remain working with children, and there were still cases being referred to him by both other IHS workers and also by the BIA?

Mr. **Delaware**. That's what was reported to me, and my response would be that we immediately get word back to the Aberdeen area to find out what action we are taking, especially with the BIA employee that was involved in this.

Ms. **Soller**. Senator, I have no further questions.

Senator **Daschle**. Thank you, Ms. Soller.

I frankly find the testimony that I have just heard, with all due respect, appalling. I think the indictment that I heard prior to the time you came to the table—and I only speak for myself—is fully justified. I don't care whether you are an acting director for 1 day or for 3 months, the impression that you leave the committee—and I hope that perhaps you might clarify it right now—is that it is not your job, but we'll let somebody else do it. If that is the case, the attitudinal representation that I have just heard causes me to wonder whether or not there is any role at all for the BIA or IHS or anybody else in the problems that we have been examining for the last couple of days.

You talked about adding new slots in response to one of Ms. Soller questions. You are adding new slots but not filling the vacancies of the old ones. Then you were asked what incentives you have been providing for recruiting in the old ones. You said a few years ago you had a scholarship program and you don't know what has happened to it these days.

All the way through your answers to the questions in the last 15 or 20 minutes have been "No emergency, business as usual, no concern, we really don't have a problem here." Now, if that is the attitude—I thought that comments made by the witness just before you were perhaps a little more radical than I would have ascribed to the BIA, but having just heard your answers to the questions presented I'm not sure it is too radical at all. I think it is right on target.

Is there anything you want to do to respond to this sense I have that it really is more attitudinal than it is resources? Convince me in the next 2 minutes that what you're doing actually is something that you care about.

Mr. DELAWARE. Senator, personally this is not the first detail I have been put on. I have been on others, and——

Senator DASCHLE. Don't give me a bureaucratic answer. Tell me exactly why you care about what you are doing right now and what you are doing to make a change.

Mr. DELAWARE. I can tell you what I've been doing in Employment Assistance, and given the opportunity in Social Services I would do the same thing. In Employment Assistance we have over 150 tribal contracts. We are working with the tribes. Every time we do any planning for the Employment Assistance Program we include our contractor's staff, we sit down to discuss and work these things out. We let them have input, and I'm positive we have a very good working relationship in the Employment Assistance Program.

Now, I wish I could do that in Social Services. I would like to do that, but I was put in there to act and primarily to keep the administrative portion of the program going and——

Senator DASCHLE. You're not even acting. You're not even keeping your seat warm. Again, I emphasize I'm just talking strictly as the Senator from South Dakota. I can't speak for the Chairman, the Senator from Arizona. But I think it is frankly outrageous. Why does it take a select committee like this to focus on a problem that you have to deal with every day, and when you have a golden moment to say these are the things we're doing—one, two, three, four, five—what you do is you blow it? You come before the committee and you say it is not your problem. That's what I'm hearing.

So I can understand the frustration the people that have to work on the reservations every single day who come to you, and if I hear it, what in the world do they hear every day? That's outrageous.

Again, with all due respect, I just think we have got to find a better way. Whether it is in the BIA or the IHS or the ABC it doesn't make any difference. We are failing at this, and I can understand why.

I have no further questions. You are excused. We will take the next panel. Thank you.

Our next panel consists of Judge William Thorne and Penny Coleman.

[Witnesses sworn.]

Senator DASCHLE. Ms. Soller.

Ms. SOLLER. Thank you, Senator.

STATEMENT OF PENNY COLEMAN, ATTORNEY, DIVISION OF INDIAN AFFAIRS, OFFICE OF THE SOLICITOR

Ms. SOLLER. Ms. Coleman, please identify yourself and tell us what your current position is?

Ms. COLEMAN. I'm Penny Coleman. I am an attorney in the Division of Indian Affairs in the Office of the Solicitor in the DC office.

Ms. SOLLER. Are you also a member of the National Oversight Committee?

Ms. COLEMAN. Yes; I am a member of that committee for about the last 8 months.

Ms. SOLLER. Now, while you have been in your current position there did you conduct a survey or gain any information about what is perceived in the field about the handling in court and in the investigative process of child sex abuse cases?

Ms. COLEMAN. What I did fairly recently is prepare a memorandum for the BIA that was sent to the BIA area special officers basically asking them about their perceptions of FBI and U.S. attorney investigative priorities. It was one of the things that the committee had asked me to look at as to whether the FBI was making timely investigations, whether the U.S. attorneys were doing the prosecutions.

I found generally that many of the investigations are not timely, primarily because of small FBI staff. Some of the FBI agencies do not consider it a priority. It is very dependent upon areas. There is a strong feeling that in the Phoenix area and in South Dakota the FBI agents and U.S. attorneys have a very strong priority for child sexual abuse cases. In other States those priorities are not so hot.

Ms. SOLLER. Well, if there is a prioritization given to this issue by BIA, why do you think it is that there isn't the same priority felt across the country?

Ms. COLEMAN. Well, it takes time to teach people what happens to children in these kinds of situations. I was at a FBI seminar in South Dakota last spring, and the FBI agents sat in on a multi-disciplinary tape, as did our criminal investigators—tribal and BIA—and they were shocked. They had never thought of being a real part of a team to work at child protection. That's not true across the board, but there were individuals, and for each one of those individuals it was really the first time that the concept had hit them.

Since priorities are developed at a local basis, individuals have to be taught that this is a priority, the same as in the Bureau.

Ms. SOLLER. As a member of the National Oversight Committee what has been your experience with the way that IHS is responding to the problem of child sexual abuse?

Ms. COLEMAN. IHS' response has varied. They are doing some positive things. They have developed a special initiatives team to provide technical assistance and crisis resolution. They are looking at developing a task group within our committee on domestic violence so that the groups can work together and so that we can have a coordinated approach.

On other things there seems to be not necessarily the same initiative. One of the problems seems to be mental health. Because mental health only has $13 million, there is a perception there, I think, that there are so many mental health problems having to be addressed that there is not the time or the money to add on, and until then there is just not a lot that they can do about it.

Ms. SOLLER. So, in other words, are you saying that their feeling seems to be that since $13 million is supposed to cover all mental health issues that it really can't cover the extra cost of treatment for child sex abuse?

Ms. COLEMAN. There is just no way it could cover it. It is just not possible. When you're talking about $200,000 for the Hopi project, alone, on an ongoing basis, and if you want to provide services for every situation, whether it is a large group of victims, with any kind of intensity—you are going to have to do it at Greasewood and at Fort Peck and at Crow Creek and at every one of the other areas where there have been significant problems raised. To do that is just not conceivable, I would think, with that $13 million.

Ms. SOLLER. Has it been your experience with the Memorandum of Understanding that the two agencies have been able to coordinate a policy on background checks?

Ms. COLEMAN. Not on background checks.

Ms. SOLLER. How about on reporting?

Ms. COLEMAN. On reporting we do have a coordinated policy. Unfortunately, it has not hit the field yet. The policy has gone out, but we have been hearing back that not all of the units have been given the policy and they don't even realize it exists.

Ms. SOLLER. So though it may have been coordinated at the national level in the field, as Ms. Atencia testified, there is a real problem with the coordination of the two agencies?

Ms. COLEMAN. Yes.

STATEMENT OF HON. WILLIAM THORNE, STATE JUDGE, FORMER TRIBAL JUDGE

Ms. SOLLER. Judge Thorne, I'd like to turn to you for a minute. Please give us a brief synopsis of your background, particularly in the areas of dealing with tribal courts and with child issues.

Judge THORNE. For approximately 8 years before I became a State judge I was a part-time tribal court judge. I have trained tribal judges throughout the country. I have served in tribal courts in four or five different States. I have served on a number of State and national committees dealing with child abuse.

Ms. SOLLER. I notice that you have submitted an extensive statement, and at this time I wonder if you would like to submit that for the record?

Judge THORNE. I would.

Senator DECONCINI. Without objection, it will appear in the record. Thank you, Judge Thorne.

[Prepared statement of Mr. Thorne appears in appendix.]

Ms. SOLLER. Judge Thorne, I'd like to go through some of the points you have raised there, and some other points, as well, and look at some of the possible solutions or ways to address some of the issues we have heard over the last several days, if we could.

First of all I'd like to look at the issue of background investigation. Do you feel that there is a need for background investigations going beyond BIA employees?

Judge THORNE. Absolutely. There are a number of people who deal with children that are in positions involving Federal monies, whether it is contract or private providers or tribal or BIA or IHS. They all ought to go through these kinds of checks, and the checks ought to be more than just simply checks for criminal prosecutions and convictions. It ought to involve a reporting service that deals with substantiated abuse of children, which may never get to a criminal court. But if there are substantiated cases of abuse, that ought to be reported.

What I have observed recently is that there is no coordination from reservation to reservation, much less area to area, and the checks that are made usually omit the State reporting systems. So I think it all has to be pulled together.

Ms. SOLLER. What about tribes that want to check on the background of their employees? Do you think the Federal Government should have a role in doing that?

Judge THORNE. I think they ought to assist them in that, or at least make those facilities available, even if it is just simply to submit the name and the identifying information to an office and then have that office respond yes or no. That information certainly is confidential, but it ought to be available to someone who is going to hire that person to work with children. Tribes don't have access to that information now, and there ought to be some place that they can submit a name that is coordinated and receives reports from the States, from the tribes, from the Bureau, from anybody else who takes those kinds of reports.

Ms. SOLLER. I know you have listened today and heard a lot of discussion about mandatory reporting. Do you think that a mandatory reporting law is something that would be advisable to adopt in the Federal Government?

Judge THORNE. I think it is advisable. I'm not sure that it is going to solve a lot by itself. I think it has to be very broad in coverage.

During my term as a tribal judge it was not at all unusual to run up against Federal employees who felt that they did not have to obey tribal reporting laws, who felt that they did not have to appear as witnesses, did not have to follow tribal court orders in terms of treatment of children. I think all of those are issues that are rolled up in the reporting.

I think, in addition to that, people need to be educated who work with children—the teachers, school bus drivers, nurses—to look for more than just simply bruises, to not wait until someone comes into the school nurse to say that they have been abused. There are a whole series of behavioral indicators and these people ought to be aware of those. While they don't prove abuse, indicators should raise some red flags that then allow professionals to come in and verify whether abuse has occurred or not. I think all of those things have to be tied in with reporting.

And on top of that, if you have reporting but you don't have services I think you do a vast disservice to those victims, and that's really my concern—those victims out there.

When children force themselves to come forward and say that they have been abused they have made themselves more fragile, more vulnerable at that point, and the services are essential. If there are no services, I think it is ludicrous to encourage them to go forward, put their own necks on the line again, and then not give them any help.

I think it also causes a message to go out in the community. It is a very subtle message that maybe abuse is okay if nobody is following up on reports and services are not available to victims.

I think mandatory reporting laws are important, but I think by itself it is not enough, and may even be a disservice unless you attach the services to go to those victims.

Ms. SOLLER. You mentioned that one of the concerns you have about Federal reporting laws is that some people do not abide by tribal reporting laws. Why would you need a tribal reporting law if there was a Federal requirement that could punish people if they did not report crimes happening on Indian reservations?

Judge THORNE. I think that as a practical matter U.S. Attorneys are not going to prosecute people in Federal court for violation of a Federal reporting law. They are making a name for themselves by prosecuting big time crimes with large audiences who want to see what happens. I think you're going to get effective prosecution of mandatory reporting at a local level, if anywhere. Where people know the consequence of not reporting, they see it as an ongoing, systemic kind of a problem, and attack it.

But even in the States that have mandatory reporting, as Mr. Davidson said earlier, very little is done in terms of enforcing that.

Ms. SOLLER. Do you think that the two, both Federal and tribal reporting laws, could work in conjunction with each other?

Judge THORNE. Absolutely. I think what the mandatory reporting would do, if it was a Federal act, is require that Federal employees disclose information. There have been instances where, as a tribal judge, Indian Health Service and BIA would not disclose information to the tribal court about child abuse cases.

Ms. SOLLER. Why not?

Judge THORNE. One case was even so ludicrous that the tribal court had a report that a young girl had been molested. We referred her up for a physical examination at the IHS clinic, and one of the charges was that the family member had been abusing her. IHS would not release those results back to the court even though the court ordered the exam. They said that they could not release it without the parent's permission. The parent, who was the suspected abuser, was not going to release that information and IHS would not give it to the court, even with a court-ordered exam.

I ended up having to go to an assistant U.S. attorney and talk him into rattling some cages by threatening to prosecute them under the Assimilated Crimes Act and the State Reporting Act so that we could get that information released.

Ms. SOLLER. What was the legal basis they used for keeping that from you?

Judge THORNE. The doctor used two. One was a doctor-patient confidentiality; the idea that if he examined this child there was an automatic confidential relationship. The second was a concern for what is called the Privacy Act, which just simply says that you are are not to release information about an individual except under certain conditions.

The Privacy Act has been quoted innumerable times to restrict the flow of information dealing with abuse cases to courts, child protection teams, and so forth.

Ms. SOLLER. Do you feel that amendments to the Privacy Act would facilitate the handling of child sex abuse cases in Indian country?

Judge THORNE. I think a clear statement saying that that type of information not only can be disclosed but ought to be disclosed and is, in fact, punishable if you don't, would get the message across.

Ms. SOLLER. We have also heard testimony here over the last 2 days that there is some problem in the handling of cases because law enforcement authorities or Social Service authorities do not always have access to child victims. One thing that has been suggested is a mandatory access law that, in case a school would not provide access, or a family did not want the child screened, that some way that could be mandated and facilitated. Do you think something like that would be helpful?

Judge THORNE. I think it is, but I think you have to be careful that you don't then end up with five or six different agencies interviewing the same victim, because that induces additional trauma to the child.

I think what you need is some sort of a coordinated effort so law enforcement isn't out there doing it on their own, Social Services isn't doing it on their own, and then the court does it, and the health clinic does it. I think there needs to be one interview with a coordinated report that gets distributed to whoever needs to have that, and that interview ought to be done by professionals.

Again, I know of cases where the FBI has investigated child abuse allegations with victims utilizing methods that were certainly much more appropriate to dealing with hardened convicts than to an 11-year-old girl for whom English is a second language. They need to be sensitized. They need to be trained. And they need access to the child, certainly, but it ought to be in such a way that it limits additional trauma to the child.

States are just now dealing with that same kind of an issue so that there is a coordinated interview with the child. It may even be videotaped so that other agencies have access and can see the child's response and you don't have to put the child through the trauma of explaining to six different strangers at six different times what happened.

Ms. SOLLER. We have heard testimony today about the tension or the difficulties that BIA and IHS have in determining which is the lead agency in a case. Do you have an opinion as to whether or not one of them should be or could be the lead agency in handling child sex abuse cases?

Judge THORNE. I'd be very reluctant to say that either one of them ought to have the lead role. I think that has to be determined within the communities based on what the community resources are.

Ms. SOLLER. Do you think in a particular community there should be one agency that does have a lead role?

Judge THORNE. I'm not sure that there ought to be an agency, but there ought to one group of people, maybe even a multi-agency and multi-disciplinary group that deals with it. But there ought to be one group to coordinate those things—to coordinate the criminal aspect, to coordinate the intervention, to coordinate the therapeutic treatment for the victim, to coordinate the treatment for the perpetrator.

All those things need to be done by one group that can then parcel out assignments and can say the IHS needs to give them this, BIA Social Services needs to give them this, mental health needs to provide this service, FBI does these things. I think something like that needs to be done, and I worry about giving it to one agency so that it then becomes a turf problem and the others are not going to want to cooperate.

Ms. SOLLER. Have you seen any conflicts that you believe exist in the current prosecution in Federal court of some of these child abuse cases?

Judge THORNE. I think that if the accused are Federal employees it puts the U.S. attorney in the position of criminally prosecuting a sex abuse case and then defending a civil suit brought by the families of those victims. This you then ask the attorney to prosecute and defend at the same time, and I think that is an unfair position to put an attorney in.

I think it is unfair to the victims to assist in good faith with the prosecution where you develop a rapport, hopefully, between the victim and that prosecutor and then turn around and have that attorney defending against the claims of that victim. I think somehow those need to be separated so that a separate office defends claims as opposed to prosecuting a criminal case in Federal court.

Ms. SOLLER. Ms. Coleman, from your position in the Solicitor's Office of the Department of Interior do you see any conflicts that might arise in these cases where there are criminal prosecutions followed by civil actions?

Ms. COLEMAN. First let me say that I forgot to mention that this is all my personal opinion and not discussed with my supervisors in the Solicitor's Office. But yes, I have a definite opinion about that.

I don't see the inherent conflict so much with the bringing of the criminal action versus defense of the civil action. Generally speaking, the U.S. attorney's offices are split into criminal and civil. The criminal attorneys bring the cases. The facts that have to be proved for a criminal action are not the same as those that have to be defended in a civil action because the civil action goes to whether the Federal employee was negligent in the hiring and supervising of those employees. So I don't see that inherent conflict.

I do see a problem, however, with personnel actions. I think that there can be a real problem in cases like if we are trying to defend ourselves, defend the Bureau of Indian Affairs from negligent hiring and supervising, well then to take a personnel action against that person and establish that they were negligent in hiring and supervising is proving the case and proving civil liability on the part of the U.S. Government.

So I can see that as a problem.

Ms. SOLLER. So, in other words, are you saying that the Department or the Bureau might be reluctant to take administrative or disciplinary action against an employee in a case where they thought a civil suit might result?

Ms. COLEMAN. Yes. And definitely once a civil suit has been implemented.

Ms. SOLLER. Would you have any suggestions as to how to avoid that?

Ms. COLEMAN. Well, there could be an amendment to the Federal Tort Claims Act or some other equivalent act to the effect that personnel actions could not be used as evidence to establish liability under these kinds of claims. And then that way the Federal Government would not feel like there was something to stop them from taking this personnel action, that they wouldn't be establishing the case in the civil case.

Ms. SOLLER. Judge Thorne, even if there isn't a true conflict in the U.S. attorney's office, do you think it still is a problem from the victim's perception?

Judge THORNE. I think that is absolutely the case. In order to prosecute a child sexual abuse case, particularly, but also any physical abuse case, you need to develop a rapport and a trust level between the victim and the attorney who is going to be prosecuting that case.

If the victim and the family believe that the U.S. attorney is on their side in terms of the criminal prosecution and then find out that they are opposing them on any kind of a civil claim the message that goes back to the victim is that maybe they don't believe me, maybe I can't trust these people.

Part of the problem, especially with sexual abuse, is a new violation of trust between a child and an adult. When you are just establishing that trust level and then to find that person opposed to the position that you are in. Even if it is not the same attorney but it is the same office, I think this raises all kinds of problems in the victim's mind about who really is on their side and who is looking out for their interest and who isn't.

Ms. SOLLER. Do you feel that there is currently enough money in the system for the provision of services to child sex abuse victims?

Judge THORNE. Absolutely not. Let me give you a terrible example from the midwest just within the last month.

There is a tribe that has virtually no services available on the reservation. The State does not provide any services off the reservation, even though there is, for example, a juvenile facility just minutes away from the tribal headquarters.

If you have a teenager who needs to be removed from their home there is not even emergency foster care available. What happens then is that the judge houses that victim in the jail. That's a terrible, tragic message to send to the victim. You're reporting you have been abused, so we're going to put you in jail. The ramifications of that kind of treatment are absurd for victims.

The services are not there on most reservations that I am familiar with. There are a couple that have cooperative agreements with the State—one is Utah, where the State Social Services provides, at no cost to the tribe, all services that they provide to the State juvenile courts. They honor tribal juvenile court orders on the same basis. They provide the same specialized services. But that is the exception. Most have refused to provide services unless they get jurisdiction.

Ms. SOLLER. How was that agreement able to be worked out in Utah?

Judge THORNE. The Social Service part is an informal agreement that has been in place for about 8 or 9 years where the case workers come into court, file the petitions, and testify. The judge then makes a finding, makes an order, and Social Services follows up with treatment plans, periodic reports, and reviews. All the services are provided on the same basis as in State juvenile courts. In the last four years the tribal court has even signed a written agreement where the tribal juvenile court has access to all the juvenile correctional facilities.

So to the extent that the State has programs available, for example, for juvenile offenders, the tribe has access to those same programs, again at no cost to the tribe.

Ms. SOLLER. Why was Utah willing to work out such an agreement?

Judge THORNE. I think they basically decided they don't want to fight over the children. The Ute Tribe and the State of Utah fight over everything—taxes, jurisdiction, hunting and fishing—except the children. They decided not to fight over the children based on the idea that sooner or later somebody is going to have to provide services to those kids, and they decided that the tribal court is as able to handle it as a State juvenile court. They just simply decided to provide those same services to the children. I don't know of any other place that does that.

Ms. SOLLER. Ms. Coleman, is there any other change in the Federal law or current policies that you believe would facilitate the handling of these cases?

Ms. COLEMAN. Well, there are so many that I can't remember them all. Obviously a mandatory reporting law would be helpful because of the fact that I have been told on a variety of occasions that people did not want to issue a written report, did not want to make allegations, because they were concerned about malicious prosecution or actions for libel.

The reporting mechanism that the Bureau now has in place and IHS has in place is just a policy. It is not applicable to tribes or anybody besides the Bureau of Indian Affairs and IHS. So there is no way to require reporting. There are a lot of tribes that don't have reporting requirements and don't have tribal courts. So they have no way of requiring that.

Though unquestionably it is true there aren't going to be a lot of U.S. attorneys who are going to be bringing these cases, I don't know if we need a lot of them. Sometimes all you need is a few to show the employees, the people that are responsible, that they are going to be held liable for them to get the message and realize it is part of their responsibility.

The implementation of the 638 contracting is going to be difficult the way it, the 638 Act, is written because if you decide to provide additional funding for child protection, you have to remember that even if you add $5 million, $10 million to the Social Services program, the way 638 contracting is handled it would not guarantee that there would be more child protection services. Because with the tribe's banding system, they decide priorities and they do not have to decide that child protection is a priority for them.

Ms. SOLLER. Judge Thorne, is there a way to deal with that problem?

Judge THORNE. I think the way to do that would be to allocate funds on a type of a block grant basis for the purposes of providing services to victims of child abuse and let the tribe then contract to get those services either from the State or from private providers or some place else on a purchase of services basis.

One of the tribal judges that I know very well is very frustrated with the idea that in times of tight budgets services seem to be cut; in times of expanding budgets administrative people are added.

He'd like to see the services provided in the field to the victims, and to do that without creating additional work I think the best way is to let the tribes contract for those services as they need it. Some may need, for example, a special facility to deal with perpetrators. Others may need to deal with incest, others with physical abuse, others with neglect—and let the tribe establish the need and go after the specialists that they need to deal with their specific problem rather than just one solution from Washington going out to all the local tribal communities saying this is the way it will be done.

Ms. SOLLER. So, in essence, then, would you then separate out services to child victims from the rest of the Social Service budget?

Judge THORNE. I think if you intend to make a difference in child abuse on reservations you need to get the services to the victims and to the perpetrators so that you break that cycle that we have heard other people talk about today. And if you don't do that, you're going to have a dampening effect upon the problem but you're not going to really solve the problem.

Ms. SOLLER. Ms. Coleman, do you think that the local CPT's are actually working now?

Ms. COLEMAN. I asked that at the forum, as a matter of fact, that we had last week. Where there are forums the majority of the people involved in the CPTs feel that they are functioning and that they do help them provide services.

Ms. SOLLER. Judge Thorne, do you feel that the CPT could act as a sort of coordinated local agency that you feel is needed?

Judge THORNE. If it was created from local resource people I think it would.

Again, talking with tribal judges around the country, some CPT teams seem to be working well, a good number are not working well, and they are just plain non existent in some places. They started up, they got together, they were given their charge, and they just never met again.

I think you need to pull in more than just case workers from BIA and IHS. I think you need teachers, you need child development specialists, you need the doctors, lawyers, and other people to provide that kind of coordination.

It may not be inappropriate to have, for example, an administrator who coordinates that team and then overlooks all the different aspects of treatment, criminal prosecution, and so forth, to make sure they're all working together.

Unfortunately, there have been times where criminal prosecutions have occurred, but nobody bothered to inform the child protective services people. The criminal investigation was ongoing for 1 year, and nobody bothered to take the child out of the home because one side didn't talk to the other side. I think the role of the CPT ought to be to coordinate those things so you don't get prosecutions without services or services either interfering with prosecutions or afraid to act.

I have heard investigators tell therapists not to provide services to a child until they get done with the prosecution because it may taint their testimony. I think that is outrageous for the victims.

The victims need the services immediately, and if you don't provide those I think the criminal prosecution just simply re-victimizes the victim.

Ms. SOLLER. Judge Thorne, if there was one thing about the current handling system for child sex abuse cases that you could change, what would that be?

Judge THORNE. I think it would be a creation of a group of people to evaluate a case as it is reported, make sure that services are available, and then decide if prosecution is appropriate or not.

I think criminal prosecutions are certainly appropriate in some cases, but I think an automatic prosecution puts the prosecution ahead of the needs of the child. I think our focus ought to be on what we can do for the victims, and sometimes that means locking up the perpetrator, but not always.

Ms. SOLLER. Why wouldn't it?

Judge THORNE. There are times when the perpetrator, for example, is a family member. They go to prison for 5 or 10 years and then come back. Who is going to protect the victim then or the-victim's younger siblings?

I have seen cases where we get a therapy program in place through the tribal court and where we have the perpetrator, other family members, and the victim starting to pull together and to deal with the problem and correct it under very close supervision. All of the sudden out of nowhere comes a criminal prosecution and that whole treatment program goes down the tubes because now it is one family member versus another.

There was one case where an 11-year-old who had gone to report sexual abuse, wanted help, and wanted it stopped. A lot of times all the victims want is for it to stop. She wanted it to stop. She reported it. The father ended up going to jail. The mother ended up developing a drinking problem and abandoning all the kids. The kids were placed in four or five different foster homes because nobody would take all of them. Her family was shattered. She ended up bouncing from four or five different foster homes and eventually ran off, herself, and who knows where she is now. All that because somebody decided that criminal prosecution was appropriate after a treatment program was in place.

I think we need to put the victim first, and then if we can prosecute after we have provided the services to the victim, then go ahead and prosecute. But I think the victims are the key. Prosecuting may help some victims, but in the long term the victims need the services. They don't need to be re-victimized by the process.

Ms. SOLLER. Mr. Chairman, I have no further questions.

Senator DECONCINI. Thank you.

Judge, just to follow up on the point of the prosecution and that the victim comes first, some prosecutors have innovative approaches of diversion programs and what have you. Would that fall into that kind of a category where you—

Judge THORNE. Certainly. I think as a coordinated effort that idea works. We heard one person earlier talk about using that to get somebody into treatment. That is certainly appropriate. Hang it over their head to make sure they go through treatment.

Sexual offense re-offends highest after five years, so we're talking about a long-term program.

Senator DECONCINI. It troubles me that even though there may be a good program in place for the victim—which I agree with you comes first—but then for the perpetrator to think he's not going to pay a price, or at least have to address the potential of paying a price, if nothing more than a good diversion program that forces him or encourages him to go into the treatment program.

Judge THORNE. I see nothing wrong with making the perpetrators pay a price, but I think it ought to be after we make sure the victim is taken care of.

Senator DECONCINI. You raise a good question on too much access to the children where you said sometimes they may be interviewed six times by the time they get a criminal charge or a criminal case ready to go. That poses a real dilemma. Who do you permit there?

The FBI testified before this committee that in Arizona, because of the remoteness of the BIA schools, if they don't find the student at school it is really difficult to locate them out there on the reservation, so the FBI gave us examples that unless they could get them at the school—and some schools would let them interview them without the parents and some wouldn't—it made it almost impossible in a couple of cases to actually proceed because they couldn't find the child.

Judge THORNE. I think what you need is a combination of Social Services and criminal investigators working as a team who are trained and sensitized in how to interview the children so that in one interview they get what they need. You don't have Social Services getting their needs and then the criminal people getting theirs.

Senator DECONCINI. Training is what you're talking about.

Judge THORNE. Training and cooperation.

Senator DECONCINI. Cooperation.

Judge THORNE. Yes.

Senator DECONCINI. When you gave the example of a case where IHS, after you had ordered—this was yourself?

Judge THORNE. That's right.

Senator DECONCINI. You were tribal judge at the time?

Judge THORNE. That's right.

Senator DECONCINI. You ordered IHS?

Judge THORNE. I ordered an exam of the child. They did the exam, but then refused to release the results.

Senator DECONCINI. Did you order them to release it?

Judge THORNE. I did.

Senator DECONCINI. They just ignored it, of course?

Judge THORNE. They said that Federal law prohibited them from doing it. That's right. The by-word is that if they are Federal employees they are not subject to tribal court jurisdiction.

Senator DECONCINI. Which is an issue that if we treat Indian tribes and their government under self determination or what have you that maybe there should be some reciprocal enforcement there. It would obviously save you from trying to go through the Federal court system and get an order.

Judge THORNE. Certainly. I had access that most tribal judges don't have. I had tried cases against this U.S. attorney in court. We knew each other personally. I could go to his office and tell him this is what I had and ask him to help me. Most tribal judges don't have that.

Senator DECONCINI. Regarding the tribal reporting needs, you made a point that it needs to be both Federal and tribal if you are going to have appropriate reporting, and then you have to have the services and the enforcement or it is no darn good if you don't have the whole package together.

Judge THORNE. Right.

Senator DECONCINI. Do you think, from your experience dealing with tribal governments, that if you had the same requirements for the tribes to adopt a uniform reporting system—as the Federal Government has required all States to do—would that be looked upon with disfavor? Do you have an opinion?

Judge THORNE. I think if you provided the funding mechanism to fund it I think most of them would be willing to do that, and especially then if you worked that in to some sort of joint investigation of criminal and social aspects and incorporated that together so it is reported, referred, and is guaranteed follow up. I think that would be ideal.

Senator DECONCINI. How long were you a tribal judge?

Judge THORNE. About 8 years.

Senator DECONCINI. About 8 years. That's not elected? That's appointed by the tribal council?

Judge THORNE. That's right.

Senator DECONCINI. How autonomous is that in the tribe that you were on?

Judge THORNE. The places where I worked it was very autonomous. Part of that was that it was a part-time position for me. I practiced law on the side. But they knew that at any point they could get rid of me. They didn't. That included times when I held tribal councils in contempt and ordered child support against council members and other things they didn't like, but they understood that that was the way it worked.

Senator DECONCINI. Ms. Coleman, in the Hopi case was there any administrative action or discipline taken in that case from the Solicitor's Office?

Ms. COLEMAN. From the Solicitor's Office?

Senator DECONCINI. Yes.

Ms. COLEMAN. No, our office wouldn't be involved——

Senator DECONCINI. You wouldn't be doing that?

Ms. COLEMAN [continuing]. Specifically in taking any kind of personnel action.

Senator DECONCINI. Do you know if there was any?

Ms. COLEMAN. As far as I know there was none.

Senator DECONCINI. Do you find that as disturbing as I do, knowing that case?

Ms. COLEMAN. Well, on the *Hopi* case I really can't discuss it specifically because there is ongoing litigation. But personally on any case where there is no administrative action taken I just think it is outrageous.

Senator DeConcini. I agree with you. You indicated that you didn't think that you had to have—I don't want to put words in your mouth—universal enforcement, but that selective enforcement would send a message and you didn't need to prosecute too many of these cases. Do you really believe in Indian country that would be effective?

Ms. Coleman. I think that there is a lot of management between central office and the people down at the very lowest level who have been there in the Bureau for years and years and years, and if they don't find that at some point—if they find at some point that they can be held liable, then they will react. But if there is no kind of enforcement mechanism, they, of course, could always just ignore whatever is said at the central office level.

Senator DeConcini. I don't want to put you in a position with your department, but we have heard so much about need for reporting laws, and certainly the Congress has a responsibility here for not responding, but do you know if the Solicitor's Office has made any such recommendations?

Ms. Coleman. On mandatory reporting laws?

Senator DeConcini. Right. For Federal lands, including Indian lands.

Ms. Coleman. I'm almost positive we haven't.

Senator DeConcini. You don't know why, do you?

Ms. Coleman. Yes; I think I do because I am the only person in the central office that works on child protection, and my involvement is fairly recent and is a result of my bosses sitting down and discussing the fact that we should do what we can do to help the Bureau work on prevention rather than defense, and I have a complete case load besides my child protection work. So I have this whole list of things that I need to do on child protection that has to be offset against all the things that I do in the rest of my work. And so unless it comes from me——

Senator DeConcini. I don't mean this in the least bit critical, but wouldn't it be worthwhile to suggest to your supervisor or somebody or the Solicitor that maybe they propose some legislation? It always helps those of us up here to see initiatives coming from the administration, not that we can't do that ourselves, and we are also subject to that same direct question. We can suggest that to you because it seems to be universal that that's been neglected for far too long. It also seems to be universal that if we do it without the necessary assistance in programs and funding it is not going to be very successful.

Ms. Coleman. I can certainly raise it, sir.

Senator DeConcini. Thank you very much. I want to thank you both for being witnesses today.

Do you have any further questions?

Ms. Soller. I think just for the record, since Judge Thorne comes from tribal judging in a wide range of tribes it might just be helpful for the record if you wouldn't mind just listing what some of them were.

Judge Thorne. I have worked with Ute Tribe in Utah, the Southern Paiute Tribe in Utah and Northern Arizona, the Colorado River Tribe in Arizona, the Crow Tribe in Montana, Ute Mountain

Utes in Colorado, the Shoshone-Bannocks in Idaho, and several others in Montana.

Senator DECONCINI. You have sat as a judge on all those reservations?

Judge THORNE. Yes. On an ongoing basis at Fort Hall, the Shoshone-Bannocks in Idaho, and Northern Utes of Utah. But on a case-by-case basis on all the others.

Senator DECONCINI. Were you asked to travel down to the Colorado River Indian Reservation?

Judge THORNE. Right.

Senator DECONCINI. And sit on a couple of cases or for a period of time?

Judge THORNE. That's right. Usually cases that are too hot to handle locally.

Ms. SOLLER. I have no further questions.

Senator DECONCINI. Thank you very much, Judge.

Thank you, Ms. Coleman.

Ms. COLEMAN. Thank you, sir.

Senator DECONCINI. The committee will stand in recess until 10 a.m. tomorrow.

[Whereupon, at 4:35 p.m. the committee was adjourned, scheduled to reconvene at 10 a.m. on Thursday, February 23, 1989.]

SEXUAL ABUSE OF INDIAN CHILDREN

THURSDAY, FEBRUARY 23, 1989

U.S. Senate,
Select Committee on Indian Affairs,
Special Committee on Investigations,
Washington, DC.

The committee met, pursuant to recess, at 10:01 a.m., in room 216, Hart Senate Office Building, Hon. Dennis DeConcini (chairman of the committee) presiding.

Present: Senators DeConcini and McCain.

Also present: Senator Nickles and Representative Campbell.

Staff present: Kenneth Ballen, George Brent Mickum III, James H. Rowe III, Gretchen DeMar, Jr., Percy M. Samuel, Mary Ellen Fleck, and Kathy Momot.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMMITTEE OF INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DeConcini. The Special Committee on Investigations will come to order. Senator McCain is detained with Armed Services Committee business on the confirmation hearing and will be joining us later. Senator Daschle may be on his way.

I do want to welcome Representative Ben Nighthorse Campbell of the Third District of Colorado. Congressman Campbell has been a leader in many areas of energy and the environment, but certainly in the area of Native Americans' rights and problems and what have you.

Representative Campbell, we are very pleased to have you here today. We welcome you and ask you to join in any way you see fit. In just a moment I will yield to you for a statement.

Today we continue our examination of the Federal Government's legal representation of American Indians. On our first afternoon of hearings we heard extensive testimony by highly respected witnesses about the inherent conflicts in resolving legal matters affecting the Government's competing national interests in the use of land and water rights and the private interests of Indians in land and water which the Government holds as trustee and must "represent." This pervasive conflict also creates problems in policymaking which we shall hear about today.

Before I start with the witnesses I would like to summarize a letter that Senator Inouye, Senator McCain, Senator Daschle, and I sent to President Bush yesterday. A copy of the letter will be entered in the record at this time.

[Letter appears in appendix.]

Senator DeConcini. Let me just read a couple paragraphs.

> Based on the record of testimony presented to our committee and the collective experience in the Congress overseeing the Executive branch departments and agencies that are charged with trust responsibilities, we strongly advocate a more formal institutionalized process for the coordination of American Indian policies at the White House. The inherent conflict facing the Federal trustee arises not only in legal matters but also in policy decisions.
>
> In fiscal year 1989 the total Government funding for Indian programs was estimated by the Office of Management and Budget at $3.1 billion. Literally dozens and dozens of Federal entities are involved throughout our Government. We urge you to consider our call for active and coordinated policy-making at all levels of the Federal trustee Government, most notably at the White House, the Office of Management and Budget, and the Department of the Interior and Department of Justice.
>
> Today we are not sending you specific policies and legislative proposals, but rather a call of concern to reaffirm the Federal Government to the American Indians. We in Congress also have a special responsibility. We plan, through the work of our committee, to reexamine the role of Congress and to propose in due course legislative initiatives.
>
> The most important and significant indication of your Administration's commitment to helping alleviate the deplorable conditions on most Indian reservations would be the formal designation of a member of the White House staff whose primary responsibility will be issues affecting American Indians. This designation would send a signal throughout the Indian communities of your dedication to America's first inhabitants.
>
> In closing, we would like to refer to a most appropriate declaration in your inaugural address: "Great nations, like great men, should keep their word." This was first said by Supreme Court Justice Hugo Black in the dissenting opinion in *Federal Power Commission* v. *Tuscarora Indian Nation.* Your words echo American values and legal traditions that go back two centuries.

That's the end of the letter.

As was true in the first hearing, we are not examining documents relating to American Indian litigation. Recently, representatives of the special committee met with representatives of the Department of Justice to discuss access to litigation files at the Department of Justice. The Department of Justice retains the bulk of the pertinent case files of interest to the special committee since it acts as the attorney for the Department of the Interior. Although the Department of Justice continued to deny access to ongoing cases, it has agreed to provide certain material in closed files. It has not, however, agreed to provide us with any documents reflecting predecisional recommendations in those closed cases.

These memoranda are most relevant and most critical documents, for they provide the most pertinent and most concise overview of how legal decisionmaking is carried out both at the Department of Justice and the Department of the Interior. As a Congressional committee, we have a duty to inquire so that we can properly obtain information in order to legislate wisely and effectively. We will be discussing with the department whether we can get access to these essential closed case documents as well. Some progress has been made, but we are hopeful that even more progress can and should be made in an expeditious and forthcoming manner.

[Prepared statement of Senator DeConcini appears in appendix.]

Senator DeConcini. Now it is my honor to yield to the Congressman from Colorado.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. CONGRESSMAN FROM COLORADO

Mr. CAMPBELL. Thank you, Mr. Chairman. I am honored to be here this morning. I appreciate your invitation to sit with you today.

This will be my first day over here, as you know, but I have followed these hearings with great interest, obviously because of my background and heritage. I appreciate the directness and the thoroughness that you have shown throughout these proceedings. Anyone who thinks things are all well in Indian country just simply has not been out there, as you know. I appreciate the tough questions that you have asked, and I think some of those answers have been long overdue.

I know how hard Senator McCain and Senator Daschle have worked also in trying to make sure that this country is a little better Nation for American Indians and I just want them to know how much I appreciate that, too.

I guess in very simple terms, it's my feeling that the BIA is charged with doing just that, trying to make it a little better America for American Indians. In my opinion the BIA, like all agencies, is only as strong as its weakest link. If we're ever going to increase the credibility of that agency we must strengthen those areas of weakness.

I personally want to see a BIA that is measured by the highest equation and not the lowest common denominator. I want a BIA that stands proudly behind its achievements and is not reduced to explaining its failures. Someday I want to read stories in newspapers about American Indian success stories and not just the ones who have been indicted.

Mr. Chairman, very clearly we cannot expect improvements in Indian country to come from the bottom up. They have to start from the top down. As you may know, I chaired most of the House field hearings on Indian law enforcement in Colorado, New Mexico, and South Dakota. We heard much about the problems in Indian country, but looking back through my notes, so that I don't just take a negative view, there were also some exemplary comments about individuals within the BIA who I think have worked very hard. The names of Bill Lorentino and Joyce Roy in Law Enforcement and Bill Mehojah and Christine Brown in Education came through two or three times as people who are trying to do their best.

I mention this, Mr. Chairman, so that you will know that I think we need to look at both sides of the coin and establish a policy that encourages good work, that discourages bad work, and in fact, for people that abuse the system, totally relieves them of their responsibilities altogether.

I just want to reiterate how much I appreciate your leadership in these hearings. Thank you, Mr. Chairman.

Senator DECONCINI. Thank you, Congressman Campbell. We appreciate the work that you have done during your terms in Congress. We really mean that.

Our first panel this morning will be composed of Archibald Cox, former Solicitor General and former Watergate Special Counsel, and I believe still president of Common Cause; Judge Harold Tyler, former Deputy Attorney General, former U.S. District Court Judge of the Southern District of New York; and Dean Erwin Griswold, former Solicitor General and former Dean of Harvard Law School.

I will yield to Mr. Rowe.

Mr. ROWE. Thank you.

Professor Cox, we are delighted to have you here today. Would you like to start with your comments, please?

STATEMENT OF ARCHIBALD COX, FORMER SOLICITOR GENERAL AND FORMER WATERGATE SPECIAL PROSECUTOR

Mr. COX. Thank you, Mr. Chairman and members of the committee. I would like to make a short statement.

My experience with the question before the committee, the legal representation of Indians, has been chiefly in connection with the claim of the Penobscot and Passamaquoddy tribes to a large part of the area of Maine. I am somewhat familiar with the litigation 2 or 3 years ago of the Crow tribes against the State of Montana, and I've had somewhat more distant connection with such cases. I am familiar with the structural problems at the Department of the Justice.

That experience—and my reading, too—convinced me that the United States as trustee has been failing for years, and is still failing, to perform its duty as a trustee and provide adequate legal representation. In the Maine case of the Penobscot and the Passamaquoddy tribes, the ultimate settlement yielded the tribes $81 million to buy 300,000 acres of land and another $27 million trust fund.

I emphasize that just to show that it was a good, strong case. But the fact is that the cause of action that the tribes had had been totally neglected by the United States as trustee for years. After it was brought to light by the tribes themselves, for 5 years they could secure no legal representation whatsoever, public or private. Finally, Thomas Tureen, a very able and energetic lawyer from whom I hope the committee will be able to hear, took on the case. There was early resistance in the Federal Government to the United States bringing a suit on behalf of the tribes or to any form of settlement, although eventually a settlement was arranged.

In the Crow case it would certainly have been very helpful to the Crow tribes if the United States as their trustee or guardian had filed an amicus brief in the two lower Federal courts and in the Supreme Court in opposition to the appeal.

I am familiar with Louis Claiborne's testimony and think he made a very convincing case of the inadequate representation problem.

In thinking about the problem, Mr. Chairman, and what might be a remedy, it occurred to me that it is important to emphasize that there are four quite different situations in which the Indians may have need of legal representation.

One is where there is a claim against a State or private party and the monetary interests of the United States are not involved.

Another is the very common situation where the United States does have opposing legal interests—perhaps water rights for a national park, something else of that kind, perhaps taxes.

In some situations there are conflicts between the other branches of the United States—such as the Internal Revenue Commissioner seeking taxes from the Indian tribes or Indians.

And then, as Mr. Claiborne pointed out, there are many situations where Indians' rights will be indirectly affected by pending litigation, and an amicus brief from the United States would be important.

I asked myself what suggestions might be helpful to the committee with respect to a solution. Three come to mind.

One would go back to the system of bifurcated briefs that was followed in some cases during the Nixon Administration that Judge Tyler participated in putting an end to. I point out that that system is no help in instituting litigation. It becomes appropriate only when the Government is otherwise in the case. It will not institute nor will it stimulate an amicus brief. It is some help only if the United States is before the court in some other capacity. There, I would think, setting forth the side of the Indians with what legal arguments there are to be made would be sort of a minimal performance of the trustee's duty.

I would point out that it's not unusual for two Government agencies—for two sides of a case—to be argued by the Government in the lower courts, and sometimes even in the Supreme Court. The Antitrust Division and the SEC may be arguing with each other. The Interstate Commerce Commission and the Agriculture Department may be arguing with each other. There have been occasion in the past on which the Office of the Solicitor General has filed bifurcated briefs setting forth both sides of the case.

As Solicitor General I felt that was unwise. I used to take a somewhat different approach. I insisted that there would be only one brief, and that would be my brief or my office's brief, but I would assure the interested agencies that I would see that both legal arguments were fairly presented. I would argue the side I disagreed with as strongly as it could be stated before I would go on and say why I thought it was wrong. I think that nonpartisan stance but honest advice to the Court, can solve a great many of these problems.

There's a suggestion that a trust counsel be established. That clearly would be an important help, but it seems to me that there are two difficulties. One is that the opinion of a trust counsel agency will be seen as partisan special pleadings. It won't carry the same weight with the courts as the considered opinion of the United States through its lawyers in the Department of Justice. And there is considerable danger that the lawyers from such an office would come to be regarded as "special pleaders," and that the United States would forget its responsibilities, having shoved them off on trust counsel.

The other suggestion that occurred to me, Mr. Chairman, is this. Why shouldn't this responsibility of the Justice Department be put in the Civil Rights Division? After all, the Division does argue the rights of various groups and individuals seeking to protect them. It would seem to me that there is a very parallel case to be made for the Indians and that that case is buttressed by the fact that the United States has fiduciary duties to them.

In situations where there was no competing Federal interest, the Department, through the Civil Rights Division, would go ahead. Where there was a competing Federal interest—and I mean a Treasury interest or a legal right of some kind—then, of course, the Lands Division or Tax Division or whatever agency was involved would have to be brought in and some senior official in the department, either the Attorney General or the Solicitor General, would have to determine what the overall position of the United States was to be, and to set forth the arguments in the way I tried to describe earlier.

If they reject the Indians' position, they ought to present them as fairly as possible, and then perhaps it would be appropriate to provide funds for private counsel in that kind of case.

I don't know enough about the Interior Department to follow this structural suggestion through, but I would feel quite sure that something similar could be devised.

That completes my suggestions, Mr. Chairman. I would be glad to answer any questions now or later.

Senator DeConcini. Judge Tyler, do you have any statements you would care to make?

STATEMENT OF HAROLD TYLER, FORMER DEPUTY ATTORNEY GENERAL AND FORMER U.S. DISTRICT COURT JUDGE, SOUTHERN DISTRICT OF NEW YORK

Mr. Tyler. Very briefly, Mr. Chairman.

As you will see in my brief written statement, I went through a process of evolution in my major experience with these representation problems when I was Deputy Attorney General of the United States during the Ford administration.

As the committee knows from correspondence of mine at the time to the Interior Department, through the Solicitor, and to particularly Attorney General Levi and myself, counsel for President Ford, the Department of Justice, was originally very concerned in 1975 about a phenomenon of those days where various departments and agencies of Government were seeking legislation giving those agencies and departments the authority to do some or all of their own litigation in the United States courts. This concern arose partly because we sought to protect our turf, frankly, and partly because of objections which came through to me from many judges across this country—obviously, having been on the bench for 13 years before being Deputy Attorney General—I was available most easily in those days to judges who were complaining about Federal litigation being handled by several agencies and departments.

As a result I initially took a comparatively hard-nosed attitude, even about bifurcated briefs. However, as frequently happens in this world, events overcame me and us, partly because of what was going on at the time. This was the period after the trauma, sadness and difficulty at Wounded Knee. This was the period when two FBI agents were killed in the line of duty on the Rosebud reservation in the Dakotas. This was a period when former Senator James Abourezk and others in the Senate and the House were concerned about what BIA was doing and about their jurisdiction. That gave me and others in the department, including the Attorney General, a little more education.

We finally came off the problem of bifurcated briefs and, as I recall it, did not formally terminate that process during the Ford Administration. However, we were helped in Indian tribe representative because the Assistant Attorney General in charge of the lands and Natural Resources Division, which as the committee knows, has traditionally had the most to do in the Department of Justice over the years with Indian legal problems, was a man named Peter Taft who was comparatively knowledgeable and and concerned about Indian rights. Consequently we were able to do a better job thanks to him.

Also the committee may recall that during the Ford Administration, President Ford had appointed a very capable lawyer by the name of Bobbi Greene Kilberg to supervise Indian affairs. She was a part of my education and that of the Department of Justice, for which I am grateful.

During that period we also had a team presided over by Solicitor General Robert Bork to review what might be done to improve the Federal courts from top to bottom. During the course of activities of what I call the Bork commission, Bob Bork asked me about the problem of bifurcated briefs. The Solicitor's Office wasn't too keen on those because, as Professor Cox has made clear, they are not always easy to handle from the point of view of the Solicitor and the Supreme Court of the United States.

Finally during that period I had a personal experience which sharpened me up a great deal. The Oneida tribes of the United States brought suit in the United States District Court for the Northern District of New York in Syracuse, laying claim to a huge tract of territory in northern New York which included my family's farm, my family's home, and my father's business building. That made me focus. That litigation presumably ended, although started over a decade ago, in the Court of Appeals for the Second Circuit this past fall. I am not sure whether there are petitions for certiorari or not. But from that case, I learned that it would have been very nice, to echo Professor Cox, if someone in the U.S. Government—meaning, really, the Department of Justice—had appeared along with the able private lawyers in that litigation. Somehow I think it would have been more helpful, not only from the Oneidas' point of view but from that of the District Court and, later, the Court of Appeals.

So you can see very simply, Mr. Chairman, I've come a long way, but still my experience has been modest.

Echoing the comments of Louis Claiborne, Professor Cox, Dean Griswold, and others, I would like to see something different within the Department of Justice. Years ago when I was in charge of the Civil Rights Division it was very small. We had 20 lawyers only. This was in the latter part of the Eisenhower regime. I think—more by accident than design, as I recall it—that division did handle some Indian cases, but they were civil rights-oriented. Today, of course, we see different types of cases.

I have no quarrel, though, with Professor Cox's specific suggestion. That is a reasonable alternative. As you will see in my statement, however, I propose a separate office. I would lodge it in the Office of the Attorney General or in the Office of the Deputy Attorney General, to make the statement to the tribes and to the Indians that this is not an unimportant part of the Justice Department.

I am uneasy about adding other layers of bureaucracy for obvious reasons. I would hesitate to ask this Congress to think about another Assistant Attorney General position. But I don't think you have to necessarily do that as long as it is clear to everybody that this is an office which has behind it the clout of the most senior people in the Department of Justice.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Tyler appears in appendix.]

Senator DECONCINI. Judge Tyler, thank you. You are a bit modest on how much you have done. Someone said, "Great men change their mind." If somebody didn't say that, I'll say it. Obviously you have been a great attorney and jurist and I think your mood has a good influence on all of us as we deal with problems, particularly as they face Native Americans.

Dean Griswold.

STATEMENT OF ERWIN GRISWOLD, FORMER SOLICITOR GENERAL AND FORMER DEAN, HARVARD LAW SCHOOL

Mr. GRISWOLD. Mr. Chairman and members of the committee, I think I would like to supplement the prepared statement which has been filed with the committee by pointing out that this business of bifurcated briefs is nothing novel or unusual. Indeed, the Congress is considerably responsible for it, for the Congress has expressly provided that the Interstate Commerce Commission can appear separately in court, and it has also provided that the Maritime Commission shall have the same powers as the Interstate Commerce Commission.

We have such strange things in the courts as cases entitled "*United States* v. *Interstate Commerce Commission.*" I remember that as a student I used to be rather startled by that until I learned just how it happened.

In addition there are always agencies of the Government who are seeking to appear for themselves in the courts, and there are some of what I might call "fringe" agencies, like the Pension Benefit Guaranty Corporation, which are constantly appearing through their own counsel in the courts and occasionally in opposition to the position taken by the Department of Justice, although up to now the Solicitor General has been able to keep the reins in his hands.

More than 50 years ago when I was a very junior lawyer in the Solicitor General's office, we had a case called *United States* v. *McCarl.* The question in that case was whether members of the Philippine Scouts who, by 1930, had completed 30 years' service, were entitled to retire as members of the United States Army. Both the Army and the Navy felt very strongly that they should be entitled to retire. They had served, they had expected to be covered by a retirement, but Mr. McCarl was the Comptroller General and he ruled that the amount could not be paid and that any Army or

Navy finance officer who paid it would be surcharged for the amount of payment. That rather effectively stopped it.

Suit was brought in the district court in the District of Columbia, and it eventually came to the Supreme Court. One of Judge Tyler's predecessors, Judge Thacher of the Southern District of New York, was then the Solicitor General. I recall that he authorized Mr. McCarl to file a brief on behalf of the Comptroller General, and Judge Thacher filed a brief on behalf of the United States, and the court decided in favor of Judge Thacher's position.

Similar problems rose more or less constantly with the Securities and Exchange Commission. I had a rather amusing episode with General Hershey of the Selective Service Administration where he had his counsel file a brief which I hadn't authorized. The clerk of the Supreme Court refused to accept it, but he had a brilliant idea. It was "lodged" with the clerk, not filed with the court. Members of the Court were notified it was there and I was told that several members did examine it.

I think the occasional filing of separate briefs is a useful device and it has been useful in Indian cases.

My experience when I was Solicitor General with the Department of the Interior is outlined in my prepared statement. I think that may have been an aberration, and that the Interior Department has Indian matters under better control now than they appeared to me to be at that time. It did seem to me then that, particularly with respect to water rights, that the Indians were not always fully and adequately represented.

With respect to such matters as the trust counsel suggested by President Nixon during my time as Solicitor General, I think there is much to be said for it. I think it must also be kept in mind that though some questions with respect to Indians are essentially legal such as matters involving land and water rights and tend to turn on the proper interpretation and construction of treaties and statutes and are the kinds of things that courts deal with yet, on the other hand, some of the questions arising with respect to Indians are essentially political. They are related to the kind of questions which Congress considers when it decides whether to make, under the commerce power, a Federal statute binding on the States; that is, whether Congress preempts the residual powers of the States to regulate commerce.

There was argued in the Supreme Court—I think yesterday afternoon—a case involving the question whether the State of Kansas can impose its sales tax on items sold by an Indian on reservation land. Well, it often happens that reservations are not contiguous. They're not like North Dakota or Wyoming. They are full of scattered tracts that happen to have been inherited by Indians. This man's house was on Indian land and he had set up quite a shop there and he was selling things right and left, free of the State sales tax. It's not surprising that the roads were worn out as the people drove their cars there to buy items free from sales tax.

Now, it seems to me that that is a situation where the ultimate solution is not a pure question of law but is a question of policy, the kind of policy which the Congress certainly has the power to deal with under the power to regulate commerce with the Indian tribes, but where it might well be wise to say that sales to non-Indians should be subject to State taxes.

Now, if you had an Indian trust counsel, he might have to go down to the end of the road arguing no tax in this case, because he feels that he has to do everything he can to present arguments in favor of the Indians. But I think that this is a situation where a broader approach would be valid—if not by the Congress, then by the Department of Justice, the kind of judgment which the Solicitor General is constantly making when there are differences of opinion between different departments.

I remember well a case I had involving the retransmission of televised material from towers on mountaintops and then wires down into valleys, and whether that was covered by the royalties which were paid to ASCAP by the original broadcasting station. I found that there were three agencies of the Government, each of which had a different view and held it quite vehemently. The Library of Congress was responsible for the copyright law. The Communications Commission was responsible for broadcasting, and the Antitrust Division of the Department of Justice had an interest in that this greatly broadened the concentration of the control of markets.

I finally had a meeting of all of them. Then I met with each of them separately. I finally came to the conclusion that there was nobody who could decide this but me, and I took the position that the copyright protection extended to any such retransmission in the service area of the main station, but if the effect of it was to extend the service area, then it did not. The Supreme Court decided against me, but about 2 years later Congress changed the law to adopt the position which I had argued before the Supreme Court.

Now, it is not widely known—the whole function of the Office of the Solicitor General isn't widely known, but this seems to me to be exactly the kind of thing which the Solicitor General ought to be doing, and I think that within wide scope he can successfully perform that function in matters of Indian rights.

Thank you.

[Prepared statement of Mr. Griswold appears in appendix.]

Senator DECONCINI. Dean Griswold, thank you very much.

Let me just ask each of you a question. Going back to you, Dean Griswold, I am left uncertain whether or not we should have a special office for trust responsibilities, a separate office. Would you think that's a wise judgment, to create that? And if so, would you restrict it, as you have said, to land and water or anything else? You make the argument both ways.

Mr. GRISWOLD. Well, my reaction is very close to that of Judge Tyler. I think there ought to be some small group in the Department of Justice with a special responsibility to see to it that Indian rights are properly represented.

I hesitate—I was about to say that I shudder, but perhaps that's too strong—I hesitate to have an assistant attorney general for Indian rights, and more bureaucracy and so on. I think that Indian rights are perhaps 80 percent adequately taken care of now, but I recognize that there are situations, particularly if the Department of the Interior defaults in representing Indian rights as it seemed to me that it did during part of my tenure, then there is no group in the Department of Justice which is assigned any specific responsibility for Indians except the Solicitor General, who represents all interests of the United States.

Senator DeConcini. Then, Dean Griswold, you would not recommend that there be a separate office created, in and of itself, outside the Department of Justice?

Mr. Griswold. I think it's a close question, but that would be my conclusion. I do not recommend it.

Senator DeConcini. Then my second question is, if you leave it in the Department of Justice, is it feasible to create a Deputy Solicitor General for Indian Law, or any such designation as that, to signify the importance that it should be considered by the Solicitor and his Deputy?

Mr. Griswold. Well, again going back 50 years, I once participated in the creation of an Assistant Solicitor General, but in the course of time that resulted in the creation of the position of Deputy Attorney General, which Judge Tyler filled, and the office of Assistant Attorney General which Chief Justice Rehnquist held—the Office of Legal Counsel. My guess would be that if you created an Assistant Solicitor General for Indian Affairs it would in due course be spun off. I don't really think there is enough business in the Solicitor General's office to warrant having such an officer.

On the other hand, in the whole Department of Justice there is because the Department of Justice handles the cases in the lower court. Of course, the Solicitor General decides whether cases lost in the lower courts shall be appealed or not, but in my experience the volume of Indian cases as far as the Solicitor General is concerned is not very great, although when they come up they are often of very great importance.

Senator DeConcini. Judge Tyler, can you comment on that? I presume you think it should not be a separate entity outside the Department of Justice. How would you structure it if you were going to try to do it within the Department of Justice?

Mr. Tyler. As I say in my written statement, Mr. Chairman, I would opt for a small office outside of the old line litigating divisions, and I would place it either in the entourage of the Attorney General or the Deputy Attorney General, for which there is some precedent for other matters, by the way.

I agree with Dean Griswold. I think it would be a little awkward to have a Deputy Solicitor General or Assistant Solicitor General solely charged with Indian affairs. The Solicitor's Office—here I am, surrounded by two distinguished Solicitors, and I hope they will correct me—but I believe it has always been true that that office is prepared to be, and always is, ready to take on all issues in which the Federal Government is involved before our high court. And I think it ought to be left that way.

I am reluctant to see another layer of bureaucracy because I don't think it's really necessary, particularly if it's to be headed by another political appointee at an Assistant Secretary level or Assistant Attorney General level. I come to that conclusion because the traditional approach of having Lands and Natural Resources handle Indian affairs I think now, in the 1980s, is not as good as it ought to be. We have new Federal jurisdiction dealing with environmental matters. That's the division that deals with that kind of problem. But the tribes have environmental problems and they have special interests in those problems. Water rights and land rights have become more complicated rather than less complicated, I believe, and I think the Indians' special interests in those issues are sufficiently pervasive and important that there ought to be another group of lawyers within the department——

Senator DECONCINI. Well, if you kept it in the Department of Justice and created a separate small unit for it or what have you, is it more than hypothetical that you could have a situation where that office would say, "Yes, we should file a separate brief on behalf of the Indian claims here," and the Solicitor General says, "No, we're not going to do that"? And if that Deputy or whatever his title is is a pretty bold young man or woman and decides, well, I'm going to go to the Attorney General and get an opinion, and the Attorney General says, "No, we're just not going to do that," are we creating—and is it only hypothetical—a situation where the Indians could not be represented in a legitimate claim?

Mr. TYLER. Well, that's a fair question. But I think I would take the risk that as long as it is made clear that that office is positioned in the office of one of the two top people in the department, and the Congress makes clear as I am sure it would that this is an important part of the Department of Justice's legal responsibilities, I think that it would work and avoid the problem which you realistically pose.

Again, I say that because in modern times this has been done to deal with admittedly totally different issues, but it has worked, even though other components of the department have groused about these offices that have found themselves in the Deputy's office or the Attorney General's office. Somehow those two gentlemen or ladies make sure that it is worked out in a prudent and an appropriate way, particularly when Congress has directed that something of this nature be considered to be of importance.

Senator DECONCINI. Mr. Cox, can you give me an opinion on creating it separately and whether or not it can be done within the Department of Justice?

Mr. COX. Well, I think there is something to be said for having it in the Civil Rights Division rather than as a separate unit——

Senator DECONCINI. With which I really wouldn't quarrel, I hope you understand that. That's not what I put in my—if I could pursue that, Professor Cox, if it's in the Civil Rights Division and it's a legitimate claim on Indian water rights, is that a civil rights question?

Mr. COX. No, No; well, I think it's a group toward which the United States has a special trust responsibility. I think that the Civil Rights Division, despite the fact that the name is somewhat narrower than the claim on water rights, is predominantly concerned with protecting the interests of what I would normally describe as "specially disadvantaged groups," in a sense. I don't mean anything invidious by that term.

Senator DECONCINI. I understand. What you're saying, then, is that the Indian rights to water—their legal rights—in your opinion could be broadly included in civil rights?

Mr. Cox. I think it fits broadly in the kind of things that the Civil Rights Division does.

If I might go a little further, I feel very strongly that wherever this unit is put in the department, whether it is separate or in Civil Rights, it should not be in the Office of the Solicitor General. I don't think that office should be given any special responsibility for any particular kind of claims. I think it would interfere with what Dean Griswold was describing as the unique and special function of bringing together different legal points of view within the Government and trying to reach an overall resolution, which the office does with a good deal of success.

Next, I do recognize that in some cases the view of the Civil Rights Division representing the Indian claim to water rights may collide with the views of Lands and Natural Resources, representing the water rights claims of national parks. In that case I would think that the position of the United States should be resolved at the very top level of the Department. If it resolves in favor of pressing the Indian claim, then that would go forward. If it resolves it against the Indian claim, I think two things should follow. One, the presentation by the Solicitor General or whoever makes it should be as fair and dispassionate as it can be, presenting both views. And I think at that stage some sort of machinery for providing the tribe with special private counsel would be useful.

Senator DECONCINI. Well, if you ask the Solicitor General to represent two diverse views there, how can the Solicitor really represent the trustee interest which, if it is in divergence with the Government's interest——

Mr. Cox. Undeniably, there is some conflict. It doesn't trouble me as much as it does some people because it seems to me that positions like that of the Solicitor General and frequently of the Attorney General do call for somebody to be quite ambivalent, to represent the opposing interests.

Senator DECONCINI. Well, your next approach is that if that conflict arises, then you would have a contract attorney available?

Mr. Cox. I would say that if that doesn't work and if it bothers people, then private counsel should be made available.

Senator DECONCINI. Yes; Because it seems to me that you do create a separate counsel for that divergent interest.

But to get back to this trustee position——

Mr. Cox. I will, Mr. Chairman, but I would say that that should not absolve the Department of Justice of recognizing the ideas and telling the Court about the arguments on both sides.

Senator DECONCINI. Sure. Certainly. Thank you.

Congressman Campbell, do you have any questions?

Mr. CAMPBELL. Well, maybe a couple short ones, Mr. Chairman. Thank you.

Talking about Indian rights, I'm sure you're aware that a lot of times we tend to put them all in the same bag, like Indian rights are the same for all Indians, when in fact we have to deal with individual Indian tribal rights very often.

I was interested in Mr. Griswold's statement. During the years that you were the Solicitor General in dealing with the Pyramid Lake water rights claims, as I remember, there was a countersuit filed on behalf of individual Indians who lived along the Truckee

River against the Pyramid Lake Indians. Is that true? Do you remember those years?

Mr. GRISWOLD. During my time as Solicitor General I filed an original suit by the United States against the States of Nevada and California in which I sought to get the Court to allocate the water between the Indians, Nevada, and California, not as to individual owners. My theory was that when the Court had said, well, so many acre-feet go to California, then it would be up to the California courts or the Federal court in California to allocate that among the various claimants there, and similarly in Nevada, and then the Indians would get what they wanted.

Mr. CAMPBELL. The Indians being the Pyramid Lake Indians as a tribe?

Mr. GRISWOLD. This was Pyramid Lake.

Mr. CAMPBELL. Well, the question I was really asking was about the individual Indian landowners who were also involved in that lawsuit against the other Indians.

Mr. GRISWOLD. They were involved only because of the effort to try to allocate the water—to determine the amount of the water to which the Indians were entitled, because whatever water the Indians got had to come from somebody, and those were the individual landowners. To my great disappointment the Supreme Court refused to accept jurisdiction in the case, although it was a discretionary matter. It then took 10 or 15 years of litigation to get it worked out. I think there were 3,500 parties in the litigation and it cost $4,000 or $5,000 every time you served a paper on people. I thought it was a very unfortunate way to handle it, but there was nothing that the Department of Justice or the Interior Department could have done about it.

Mr. CAMPBELL. I see.

Mr. GRISWOLD. And the Interior Department was entirely supportive of the Department of Justice in an effort to get an allocation of the water.

Mr. CAMPBELL. Okay. Thank you.

Professor Cox, I note that you served for no charge as counsel to the Maine Indians. I thought that was pretty refreshing. I just thought I'd tell you that. I don't mean to impunge the legal profession, but it's not often that we have people in the legal profession trying to help Indians for nothing.

When you were dealing with the efforts of the Maine Indians, apparently the Maine Legislature was very unsupportive. That's the way I understand it. In your view, did the Carter administration fulfill its trust responsibility when it knew there was opposition from the State Legislature up there?

Mr. COX. Ultimately the solution, although hard to appraise, seems to me to have been a fair one. It certainly conferred great benefits on the Penobscot and Passamaquoddy Indians. Their lands and funds have been managed in a way, if I understand it correctly, that is a great credit both to the Indians and to this kind of disposition.

The Carter administration—different parts of it, for a time—reacted very differently. I believe that Peter Taft stayed on for a time because I associate him with my contacts with the case. He was very helpful. I had a feeling that Attorney General Bell was rather hostile, rather concerned about the Treasury, but I must say in that connection that I was there as an advocate; if the judge didn't immediately rule in my favor, I was probably a little bit inclined toward thinking that he wasn't doing what he ought to do.

Ultimately when Elliott Cutler in the White House got this as a special assignment, in my judgment he handled the matter very fairly. It's hard to appraise the settlement, but I think that on the whole it was a good settlement.

Mr. CAMPBELL. Thank you. No further questions.

Thank you, Mr. Chairman.

Senator DECONCINI. Senator McCain, do you have questions or a statement or anything?

Senator MCCAIN. No statement, Mr. Chairman.

Senator DECONCINI. Fine.

I will yield to counsel here for a few questions.

Mr. ROWE. Thank you.

Most of the discussion this morning has centered on possible procedural changes that could be made at the Department of Justice. I'd like to ask Dean Griswold to repeat the story that he puts in his statement about the Department of the Interior, which has the first delegated responsibility to fulfill the trust interests of the Federal Government for the American Indians.

Dean, would you talk about that one case when you were Solicitor General where you called up the Solicitor at the Department of the Interior because you were somewhat puzzled about the conflicting recommendation you had gotten?

Mr. GRISWOLD. Well, this was a case involving water rights of Indians. It was either in California or Nevada; I don't remember which. Maybe the line ran through the area. When cases like this came we always communicated with the department and asked for their recommendation.

I sent such a letter to the Interior Department and I received a letter from the Assistant Solicitor for the Bureau of Indian Affairs strongly recommending that we appeal the case and support the Indians. And I received a letter from the Assistant Solicitor—now, it may have been the Bureau of Land Management or it may have been the Bureau of Reclamation, I don't remember which—reviewing the matter and strongly recommending that we drop the case and not seek to take it to the Supreme Court.

I remember putting the letters side by side. I had a couple of my staff members come in and I said, "Look at this." The result was that I called the Solicitor of the Department of the Interior on the telephone and I said, "I would like to have the recommendation of the Interior Department on this." "You have it," he said. I said, "Well, I don't understand it. I have two conflicting letters from two of your assistants. What is the recommendation of the Interior Department?" "You have it."

Well, I figured that was about as far as I was going to go down that road, so I decided it was up to me to decide what to do, as it was anyhow. I filed a petition for certiorari to seek review which, unfortunately, the Supreme Court denied.

Mr. ROWE. Judge Tyler, did you have any similar experiences in your dealings with the Department of the Interior when you were Deputy Attorney General?

Mr. TYLER. Yes; I can't remember the names of the cases, but there were episodes where—mainly as I recall it, the Assistant Attorney General in charge of Lands and Natural Resources and I had to work out with the Solicitor's Office in Interior two types of conflicts. One was the type that Dean Griswold has just described where components of Interior did not have the same viewpoints, and then conflicts between our view of the law and that of the Solicitor's Office in the Department of the Interior. Frankly, I didn't regard them as particularly unusual. I do think that some had to deal with Indian rights—or, perhaps more precisely, viewpoints that had to do with the tribes and the Indians who would have a concern in this litigation, which was usually land litigation or water litigation.

But I didn't regard them as too unusual because you have that problem, of course, as I'm sure you know, with other departments in the Government where there will be divisions within the Defense Department, for example, on litigation. A good example is cases involving the shipbuilding industry where the Navy took one viewpoint in the 1970s and the Secretary of Defense and the Deputy Secretary of Defense took another viewpoint, and the Department of Justice took a third viewpoint. Well, it sounds awful but we worked it out.

I think the difference with the Indians is, frankly, the trust concept. As I've matured over the years I seem to find out the difference. I would feel more comfortable if there were a small but special office—not in the Solicitor General's Office, as has been said by my colleagues, but somewhere, because I think it would make things easier and more efficient and really fairer in the long view.

Mr. ROWE. One of the things that we've been talking about in the first day of hearings is procedural changes at the Department of the Interior. The three of you are more expert on the Department of Justice, but I think I've heard you all identify problems with the Department of the Interior. Is it fair to say that all three of you would think that if there are going to be changes in the process, that the Department of the Interior's approach should be just as rigorously examined by this committee as the Department of Justice?

Judge Tyler, to be fair to you, at the time that you wrote the letter suggesting that the bifurcated briefs policy be stopped, was there not a larger concern that you had as Deputy Attorney General regarding other agencies and departments attempting to come in on their own, whether it was EPA or FDA, and constantly having the Government speak with two voices?

Mr. TYLER. Yes; there seemed to be, in the middle 1970s, that kind of a problem. As I said earlier, I admit that having just come off the Federal bench, it was easy for Federal judges across the land who were complaining about this practice—they felt they had a friendly voice in the Department of Justice.

I came to view the bifurcated brief problem as less of a problem as I got into it more. The correspondence which the committee knows that I had was really aimed at a broader problem, as we saw it then, than proper representation of the Indians.

I am grateful, however, as I begin to learn more about the problems of Indians that my combative attitude slows down a bit in that area.

Mr. ROWE. Professor Cox, you started your involvement in the Maine litigation in 1977, I believe. Is it not true that before your involvement began, the Department of the Interior had been quite slow in advancing the interests of the Maine tribes?

Mr. COX. Certainly it was very slow for a very substantial period. And my memory is that during the time that I was involved, Interior was—well, as a matter of fact, I have little recollection of their being involved. It was mostly the Department of Justice and the White House that we dealt with. Interior certainly didn't do anything—I think I would have known—to support the claim.

Mr. ROWE. Is it fair to say that Judge Gignoux, the district judge in Maine, was the individual in the Federal Government who pushed the Indian cause through his judicial opinions?

Mr. COX. He was the important single individual by far. He was amazingly courageous. None of his land was involved, unlike yours, Judge Tyler, or indeed, unlike my wife's family's land. But he was subjected to all kinds of abuse and personal threats. His wife was subjected to threats. Judge Gignoux was a very fine judge and he was very courageous in this instance.

Yes, he was clearly the star.

Mr. ROWE. How would you compare your representation of the Maine Indians with other work that you have participated in as counsel in your career?

Mr. COX. Well, I derived great satisfaction from it, both because I thought the United States had behaved rather badly through its representatives, and I wanted to do what I could to make that right, and I got much satisfaction because it worked out so well in the end. I don't mean just the settlement but the way it has been managed.

Mr. ROWE. Were you subjected to similar threats as Judge Gignoux during your representation?

Mr. COX. To some degree. We did get a few phone calls threatening to burn the house down and things like that, but not on the same level. I was telling him of this once, and then when he told me what happened to him I thought I had gotten off easy.

Mr. ROWE. The three of you are two former Solicitor Generals and a former Deputy Attorney General who has also been a Federal judge. You have all highlighted today problems in the ability of the Federal trustee to represent the Indians.

We will be coming back to you for your views as the committee winds up its hearings and looks more carefully and closely at policy recommendations. Thank you very much.

Senator DECONCINI. Gentlemen, I want to thank you very much for taking the time and giving us your thoughts and experiences. There's nothing like the history and background that you have been able to give us. The experiences you have had are just renowned. We appreciate very, very much your taking the time. I know you are busy people, and the remuneration here is very small but it will be very helpful to us. We thank you.

We will take a 5-minute break now.

[Recess.]

Senator DeConcini. Our next witness is Pat Ragsdale.

[Witness sworn.]

Senator DeConcini. Let me welcome you here today, Mr. Ragsdale. You are the Acting Assistant Secretary for Indian Affairs. We are going to discuss with you the conflict involved in legal representation and policy-making affecting American Indians.

On Monday afternoon we will be discussing with Mr. Ragsdale some of the committee's findings relating to the BIA.

Mr. Ragsdale, we understand and appreciate the business that you have to attend to in your Acting Assistant Secretary position and the tremendous amount of time that that takes. We appreciate your being here today and Monday to give us your views and opinions in some areas that are most troubling to us. We are trying to find some bottom line that makes some sense, and you may be able to help us.

Do you have a statement, Mr. Ragsdale?

Mr. Ragsdale. Yes, I do. I think it has been provided to the committee for the record.

Senator DeConcini. Yes; I think it has. Are you going to read it or are you going to put it in the record?

Mr. Ragsdale. What I would like to do, Mr. Chairman, is to highlight my statement.

Senator DeConcini. Fine. The statement will appear in the record in full and you may proceed.

STATEMENT OF WILLIAM "PAT" RAGSDALE, ACTING ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Ragsdale. Thank you, Mr. Chairman.

Mr. Chairman, I thank you for the opportunity to appear today to discuss Indian policy and to allow me to comment.

I should probably say first that I am a little humbled by being sandwiched between the distinguished legal panel that just appeared and by a couple of friends of mine sitting behind me, Tim Vollman and Ross Swimmer, both of whom are attorneys. As you hear my testimony I think it will become obvious to you that I am not an attorney and don't profess to be one.

I guess at the start, by way of background, I need to explain that my testimony has not been reviewed for clearance by the Department of the Interior. Therefore my testimony represents my personal view and may be subject to clarification by the department at a later date.

Again I want to emphasize that I am not here representing the Department of the Interior.

I am a career employee. My insight and perspective are based on the sum of my experience in the Bureau of Indian Affairs. When I agreed to transfer to the headquarters office from the field in August 1987, it was with the understanding with my former boss, Ross Swimmer, that I would assist him in oversight and gradually assume the day-to-day operations of the Bureau of Indian Affairs so that he could focus more on legislative initiatives and policy formulation.

The insight I have is based upon my background and experience. I am 42 years of age, of one-fourth degree Cherokee Indian blood, and registered as a member of the tribe. I have 22 years of Federal service, 19 in the Bureau of Indian Affairs and 3 years in the United States Marines.

I come from the ranks of the Indian Bureau. I commenced working as a laborer. I worked in boarding schools of the Bureau of Indian Affairs during the summer months while I was attending college. After I graduated from college in the spring of 1968 I was employed as a teacher. I taught history and coached all sports until I entered the Marines in October 1969.

After my military service in 1974 I worked as a tribal government specialist and was later appointed in 1977 to serve as an agency superintendent on the Northern Ute Reservation located in Utah. Since then I have served in various positions, and now—temporarily—I am acting as Assistant Secretary.

I tell our employees that service in the Indian Bureau is a very noble profession. It requires dedication, a belief in mission, and understanding that the reward for service comes from self-satisfaction and perseverance to try to make things work better, not from public acclaim. If one cannot accept this fact, then service in the Indian business will break one's heart and spirit.

I might add that to lead in the Indian Bureau, one is required to lead with both one's head and one's heart. It's that kind of a business.

BIA employees are naturally hurt by the criticism of the institutional BIA and are often blamed for failures not of their making. The times of despair and frustration are usually more than compensated for and balanced by the successes of individual achievements, and occasionally by thanks from the Indians we serve.

On a personal note, my family has provided me with their support. I have been fortunate that they have been willing to sacrifice their wants and needs to allow me to pursue this endeavor. My family and many like it in the Indian service understand what it is like to live on an Indian reservation. While it is true that employees had better develop a tough hide to withstand the criticism which seems to point at the Indian Bureau for every scandalous thing ever perpetrated against Indians, and while the Indian Bureau makes a convenient place to lay the blame, it is not a fair categorization, in my opinion.

What I am saying is that I believe my experience gives me broad perspective for the views I will share with you today.

What is the purpose of Indian affairs administration? Either Senator DeConcini or Senator McCain quoted the words of Felix Cohen at the start of these hearings. As I watched the hearing on C-SPAN that evening I was reminded of the origin of the quote. Years ago I read an account of the era when Mr. Cohen served in the Department of the Interior. The miner's canary quote was taken from a periodical which was published after World War II and Mr. Cohen was retired from his Interior post, having championed Indian rights and self-government from both outside and inside the Government.

The results of the Nazi holocaust had been realized by the civilized world and Mr. Cohen, a person of Jewish faith himself, advanced his belief that the essence of the moral health and character of a nation could be measured by the way it treated its minorities. The rights of the dominant society are more likely to be protected if only because they outnumber the minority. It is the minority who must, by necessity, rely on the good will of the dominant society to ensure that their human rights are indeed protected.

In the old mining days a canary was used to determine the quality of the air that the miners were breathing when at work in the mines. The canary was the first to detect gas and provide the miners with warning that their lives were in danger.

Thus Felix Cohen said, "Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere, and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith."

The history of this Nation's dealings with Indians provides insight into the Federal-Indian relationship.

Federal-Indian relations commenced when Indians controlled this country. Indian tribes were required to cede to the United States vast amounts of territory and resources. The Nation, in turn—it is my belief—is obligated to protect the resources remaining in Indian ownership and continue the Federal relationship with governments of Alaska Natives and Indian people. These people and their governments were described by the Supreme Court long ago as "domestic dependent nations," possessing all the attributes of sovereignty that have not been extinguished by the United States.

Once Indians were the dominant society of this country. Today they represent less than one-half of 1 percent of the Nation's population. The United States has a fiduciary responsibility to preserve, protect, and enhance Indian property held in trust for Indian beneficiaries. The body of the trust is approximately 54 million acres of Indian land, $1.75 billion of Indian revenues, and an undetermined but extremely valuable amount of resources such as water, minerals, timber, fish, and wildlife resources. The Indian governments have a significant role in determining how these resources are to be utilized.

My point is this. The purpose of Indian affairs administration is to extend the miner's canary analogy. Both the Executive and the Legislative bodies share responsibilities for maintaining a political atmosphere in which the judicially-confirmed fiduciary obligations of the United States of America to Indians and Alaska Natives can be fulfilled. In Indian affairs, the courts have played a critically essential role in the interpretation of the meaning, and on occasion have directed the enforcement, of Indian rights. Because of this unique governmental relationship and trust and fiduciary responsibilities, access to legal representation is a critical requirement for the Bureau of Indian Affairs to carry out its responsibilities.

What are the responsibilities of the United States? In my opinion, the responsibilities of the United States are based upon public policies recognizing, one, self-determination and self-governance of more than 500 Indian tribes and Alaska Native governments with government-to-government relationships; second, the responsibility to execute the fiduciary obligations or the trusteeship on behalf of Indians.

These public policies regarding Indian affairs exist in a context, particularly in the Department of the Interior, of differing and occasionally competing interests affecting the natural resources of the Nation and those owned by Indians.

What is the mission of the Indian Bureau? The Indian Bureau is a primary agent of the Government to ensure that Federal obligations are executed. Therefore, the mission of the Indian Bureau and the attorneys who represent it, in my opinion, is to ensure that the Federal responsibilities are executed with care and diligence. In my view, all Federal agencies share this fiduciary obligation.

Let me digress for just a moment. The normal function, as far as the American public is concerned, of the Department of the Interior is that of a steward. And while it is true that the Secretary of the Interior is the steward for all of the Nation's lands that are commonly owned by all of the people in this country, that responsibility in my opinion is slightly different from the trusteeship. The duties and responsibilities of the trusteeship are essentially the same, but based on what I understand of Indian law, the obligation of the trustee is expected to be held to a higher standard. Whereas a steward in managing the Nation's lands can manage those in a way to maximize the return on those lands, the trustee over Indian lands has a different kind of responsibility, especially since the Indian beneficiaries have a say as to how those lands are to be managed or encumbered.

Appropriate legal representation of the primary agent, the Indian Bureau, becomes exceedingly important given the complexity of Indian law and the dual government-to-government responsibilities and trusteeship of the United States to protect Indian rights when other interests cross-cut.

How is policy affected by political process? The political process provides the public policy for the Executive branch to implement. Indian law, however, is not precise in most instances. The policies of self-governance and trusteeship create tension between the Indian beneficiary and the United States. Conversely, those same policies cause tension and occasional conflict with other Federal agencies and with State and local governments and the policies governing Federal relationships with those governments.

Nonetheless, the United States has an affirmative responsibility to advance or protect the Indian resources. Although all Federal agencies have the responsibility to respect Indian rights, it is usually left to the Indian Bureau to ensure that those obligations are kept. The Bureau must rely on its funding and manpower resources to fulfill those requirements which compete with other services which the Bureau is obligated to perform, such as education and social services. Again, strong legal representation is essential if Bureau decisionmakers and the Assistant Secretary for Indian Affairs are to rationally set priorities and balance against budget targets all program interests for which the Bureau is responsible. These range to almost every service that any government provides except an authorization to make war and provide for a common defense.

Resolution of rights of Indian tribes to natural resources, for example, usually involves other programs and agencies of the Department of the Interior, such as the Fish and Wildlife Service and the

Bureau of Reclamation. Decisionmaking in those cases is complicated by politics, and constituents' interests can be adverse to the Indian program.

Resolution of claims to natural resources involves Federal, tribal, State, and local governments as well as private interests. These claims are often settled or resolved by negotiations, legislation, or court decisions. When the claims are not resolved or the interests are not enforced, Indian resources or rights may be compromised. The Pyramid Lake controversy, already talked about, is just one example of this.

In some cases, pressures are brought to bear to restrict or compromise the exercise of Indian rights for other interests. I am not suggesting anything sinister. It is simply a fact of life and a part of the American political process. Throughout our history is has been the Nation's court system which has upheld the rights of Indians when the Congress or the Executive has failed to perform the obligations properly. In my opinion it is for this reason that there is a need for effective legal representation within the Executive branch to avoid unnecessary litigation and to initiate litigation on the Indians' behalf that is essential to the maintenance of those rights.

Legal representation is critical to policy formulation and implementation for the Assistant Secretary and officials throughout the Bureau. The Solicitor's Office in Washington provides legal service to the Indian Bureau's clients, primarily through the Associate Solicitor, Division of Indian Affairs. In the field the advice is provided through the Regional and Field Solicitors' Offices nearest the Bureau's clients.

My general evaluation is that the legal services provided were of good quality and advocated the enforcement of the Government's fiduciary duties to Indians. In other words, the general disposition of the Government attorneys serving the Bureau of Indian Affairs has been to advance the Government's programs on behalf of Indians and to protect Indian rights.

Indian law is complex and difficult for many to understand. The very idea that there is a group of people in this country who have a special body of law that governs their lives differently from other Americans probably comes as a great surprise to many people. Those laws are intended to benefit Indians because of their unique status as the original occupants of our continent. When department officials act to implement the Indian programs and other programs created by Congress, we need thorough, straightforward advice about how our program activities comply with the law. It is only a recent experience that I have felt that legal services when blended with other interests did not, on balance, favor Indian advocacy or allow much discretion by the Secretary to pick from an array of options.

This takes me to my final points regarding protecting and enhancing Indian trust assets and the preservation of rights.

One does not get very far by simply advancing the Indian position on the basis of history or on the basis of morbid statistics which are used to justify social and health programs. When Indian interests are legally supported by our attorneys, the tribes' own attorneys have ably demonstrated their ability to negotiate and to litigate and win in the courts of the land.

My final point is that diligence and care must be taken to ensure that the Bureau has full access to legal representation that allows the maximum development of the Indian position on cross-cutting issues. Organizational or legislative improvements, however, cannot replace individuals in key positions who understand the unique relationship between Indians and the Federal Government and who work to ensure full representation of Indian positions.

I have attempted to provide this committee with my insight of policy formulation and legal representation from my own personal perspective. Undoubtedly you may want to explore these further for purposes of discussion. Again, I must point out that the Administration certainly reserves the right to make additional statements regarding my testimony or what the Congress may perceive to be needed changes. I am scheduled to be back next week to testify on other topics that the committee is reviewing.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Ragsdale appears in appendix.]

Senator DECONCINI. I now yield to Mr. Rowe for questions.

Mr. ROWE. Mr. Ragsdale, would you explain the method and manner of your testimony today?

Mr. RAGSDALE. Well, my testimony is my homespun testimony that my wife helped me type up over the last couple of weekends. I am here in my capacity as a citizen of this country, on annual leave from the Department of the Interior for the day.

The normal process for any person that testifies on behalf of the Department of the Interior is to submit their statements for clearance through the department. I respect that process. In most committee hearings I am testifying as a departmental witness and I have a certain duty to perform. In this instance, though, I did not think it was appropriate for my testimony at this particular hearing. I am not here to discuss or specify what the department's position is on policy matters. I am giving you my personal perspective.

I guess I was probably a little bit concerned that someone would take my homespun philosophy and try to change it. I have a certain amount of pride of authorship in it at this point in time.

Mr. ROWE. Did you discuss your testimony this morning with the Secretary of the Interior?

Mr. RAGSDALE. Yes; I generally outlined my testimony with Secretary Lujan the other day. Of course, he advised me to be truthful with the committee. I indicated that I had a problem with an instruction that the Ethics Officer had issued, so to resolve that and ensure that I was not officially representing the department, I decided to take annual leave, and Secretary Lujan has concurred with me taking annual leave.

Mr. ROWE. So today we are hearing your personal views and not the Administration's views?

Mr. RAGSDALE. That is correct. When I come back Monday I expect to be fully clothed in my Department of the Interior robes, Mr. Chairman.

Mr. ROWE. All right.

At the bottom of page 3 in your statement you talk about the "policies of self-governance and trusteeship creating tension between the Indian beneficiary and the United States." Is there tension on a daily basis at the Department of the Interior?

Mr. RAGSDALE. First of all, let me explain that I think there is tension between us and our beneficiaries. There is sometimes tension between tribal governments and allottees and so on. That presents a natural conflict for anyone administering Indian affairs. So that is true in the Indian Bureau.

I think your question goes to what other kinds of tension we experience within a broader framework. Other Federal agencies, such as the Bureau of Reclamation and Fish and Wildlife Service and so on, have other constituent groups that they speak to and which they represent as a matter of course. Indian issues that come up, particularly with respect to the development of water, often conflict with the mission and responsibilities of other Federal agencies. It's quite common to experience those kinds of tension.

Mr. ROWE. And would that be true for departments and agencies outside of the Department of the Interior, such as the Forestry Service, for instance?

Mr. RAGSDALE. Oh, certainly. We have quite a bit of dialog with them about this all the time.

Mr. ROWE. Do you feel that there is an adequate understanding of what the Federal trust responsibility is in the Government?

Mr. RAGSDALE. I think there is a better understanding than when I first got into this business 20 years ago. I know that's the case. But I think there could be a more adequate understanding insofar as other Federal agencies are concerned, that the obligations of the United States are the obligations of the United States, not just the obligations that the Indian Bureau is supposed to perform.

Mr. ROWE. What steps could be taken to help educate, if that's the word——

Mr. RAGSDALE. You're moving into a policy arena. Again, I'm just speaking as a citizen, but I think that the Secretary and the President could consider offering some specific instruction about the trust responsibilities and the obligations of the United States to ensure that those agencies exercise sensitivity or what I call due care, which is kind of a standard for any trustee. I think that might be helpful.

Mr. ROWE. At the top of page 4 of your statement you talk about the United States having "an affirmative responsibility to advance or protect the Indians' resources."

There is also a concern that the Federal Government has, is there not, to limit the exposure that the United States has in a defensive posture in litigation where they are being sued? Is that correct?

Mr. RAGSDALE. I think so. The attorneys sitting behind me could probably articulate this a lot better than I can, but as a Federal administrator I think that everyone needs to understand that within the Department of Justice and the Solicitor's Office they have a normal responsibility that if the United States may be involved in litigation, to defend the United States and to minimize the claims that the United States—the American taxpayer—might have to bear. At the same time, the conflict in that instance is that if we are at the same time trying to move forward a water settlement or some rights issue as a policy matter in a negotiation, you have this tension of protecting the United States Treasury and an idea that the obligation of the United States is limited to what an

Indian beneficiary might be able to extract out of our hide in terms of a claim or monetary award.

I don't agree with that. I understand the necessity that attorneys have to consider that and the policy involved, but that in itself is somewhat of a conflict in our policy and in our Federal responsibility, in my personal opinion.

Mr. ROWE. Do you feel that the lawyers, particularly at the Department of Justice, do have this concern about limiting the exposure of the United States?

Mr. RAGSDALE. Mr. Vollman could probably address that better than I can. I have the impression that the way the Department of Justice is organized, that their Claims Section would probably deal with that, whereas their people involved in litigation and the advancement of rights issues may not have that same concern. I suppose that within the Department of Justice, not knowing very much about how they are formally organized, that would be the responsibility of a Deputy Attorney General or the Attorney General to resolve those kinds of conflicts within his own department.

Mr. ROWE. Well, individuals inside and outside of the Government have told this committee staff that there does seem to be more time spent on thinking through the defensive posture of the United States and not as much time thinking through the affirmative—what you call "the affirmative responsibility to advance or protect the Indians' resources."

Just asking your personal opinion now, do you see the defensive thinking more than the offensive or affirmative thinking on the part of the Government's attorneys?

Mr. RAGSDALE. Well, I don't know that it's really a matter of a concerted strategy. My impression or what I would believe is that monetary matters instantly demand everyone's attention, and given the other national policy implications and trying to reduce the national deficit and the things that the Congress has to deal with on a daily basis, that monetary matters come to the forefront insofar as the chief policy makers within the Executive branch and within the Congress. So I think they tend to get more of a priority than pursuit of affirmative litigation or the advancement of a particular right.

Mr. ROWE. You state in the middle of page 4 that when Indian interests are not enforced, that there can be a compromising of Indian rights. You refer to the history of Pyramid Lake and also to the Central Utah Project. Would you briefly discuss the *Pyramid Lake* case?

Mr. RAGSDALE. Pyramid Lake—I would not claim to be an expert. I spent some time on Pyramid Lake during the last 1½ years. I was kind of on the periphery of it when I was Assistant Area Director in the Phoenix Area Office for 4 or 5 years.

But in my opinion, the issue of Pyramid Lake is probably one of our granddaddy trust cases which helps to establish the standards and the reason we need to be affirmative insofar as protecting Indian rights.

As I understand it, the Commissioner of Indian Affairs back in the 1940s failed to file a claim for the fishery resources of the Pyramid Lake Indian Tribe. Subsequently, because of the development of the Bureau of Reclamation's Newlands Project, the non-Indian farmers being served by that project as it turned out through lengthy litigation ended up with paramount water rights for farming purposes which conflicted with the Secretary's trust responsibilities, number one, and later the Endangered Species Act requirements enacted within the last 10 years by the Congress.

That is a classic case of the United States having a number of duties and responsibilities, that if due care and diligence is not taken by the people responsible for the administration of those programs, the rights of Indians are compromised and not tended to and we end up with a situation where we are today, that we are scraping for a minimum amount of water just to give the endangered species, the cui-cui fish, which has a lot of cultural significance to the Pyramid Lake Indian people, a fighting chance to live. And it's just barely a fighting chance to live, over the long run.

Mr. ROWE. Well, you are not a lawyer. Your role has been one of policy making more than legal representation in Pyramid Lake?

Mr. RAGSDALE. My role has been to see how we could make this thing work and to ensure from the department's standpoint—and these are really not parallel—to try to meet all of the obligations at the same time. It's kind of a neat trick. But as a matter of law, the non-Indian farmers served by the project have a right to that water. But at the same time we have endangered species and trust responsibilities. So the project that I was involved on, that my former boss assigned me to—kind of against my better advice—was to see if we couldn't develop a water budget that would ensure that the farmers' needs were being met and at the same time get the stream flows up to a point that the species would have a fighting chance to live and also be able to uphold and sustain our trust responsibilities, given the situation that we're in with respect to Pyramid Lake.

Mr. ROWE. Were you part of a working group that had representatives from different divisions at the Department of Justice?

Mr. RAGSDALE. That's correct. I was the Indian Bureau's representative on a departmental task force composed of me, the Bureau of Reclamation, and the Fish and Wildlife Service, along with one individual assigned from the Associate Solicitor for Indian Affairs' Office out of the Department of the Interior.

Mr. ROWE. And what was the task force specifically charged with doing?

Mr. RAGSDALE. The task force was charged with meeting those three requirements that I just referenced. Over the course of about 1 year we had some spirited internal debate, and we also had some formal meetings with the non-Indian interests, the water district, the Indians that have a vested interest in the project, both the Fallon Indian Tribe and the Pyramid Lake Indian Tribe. Our charge was to finally put into place what we call the OCAP, Operating Criteria and Procedures, for the project, and present them to the United States District Court in Nevada for filing and then for purposes of the hearing, which is still currently under litigation.

Mr. ROWE. So you made recommendations as part of this group for the operating criteria?

Mr. RAGSDALE. That's correct.

Mr. ROWE. Once your group made these recommendations, where did the recommendations go?

Mr. RAGSDALE. Well, the recommendations and the final consensus that the group had after some very healthy internal debate went to the Undersecretary, who was being advised by the Solicitor, to make the final policy cut and publish the procedures. At the same time we had to bring up with that an environmental impact statement that had been published once or twice in draft form. For one reason or another it had not been considered acceptable. So the EIS document, which is a very formal process to comply with NEPA, was moving along in accord with the OCAP procedures that we were proposing to implement.

Mr. ROWE. And the working group that came up with the recommendations, was it an instance where all the different interests negotiated, somewhat compromised their initial views?

Mr. RAGSDALE. Yes.

Mr. ROWE. And what happened once the Undersecretary got involved?

Mr. RAGSDALE. Well, the Undersecretary was apprised all along of what we were doing. As a sort of a final preview of the procedures we had a number of meetings with the people of Nevada, some open forums. One open forum that the Undersecretary attended I wasn't able to attend. It had been set up at the time by Senator Hecht.

There was a fairly adverse reaction to the next to the last proposal on the OCAP, so at that point the OCAP was revised one final time before it went final.

Mr. ROWE. When was that? What time period?

Mr. RAGSDALE. This probably would have been February or March. About this time last year, to the best of my recollection.

Mr. ROWE. Well, once the Undersecretary revised it, it presumably changed from the recommendations of the task group that you were serving on?

Mr. RAGSDALE. That's correct.

Mr. ROWE. How did you feel about the process after the revisions had been made?

Mr. RAGSDALE. Well, I had full input into the decisionmaking process. I felt personally that we were the ones that were having to give. I felt comfortable with the final decision that it was a workable decision and that it met the requirements that we were charged to meet, and I was given a full hearing—and my boss, Assistant Secretary Swimmer, was given a full hearing. I wasn't involved in all the discussion that he was involved in, but I know that there was some spirited discussion at a higher level than mine with regard to the final document.

I was satisfied with the final document, but I felt personally that we had given the most at the office, to use a phrase.

Mr. ROWE. And when you say "we," who are you referring to?

Mr. RAGSDALE. I'm referring to the Indians, who I was trying to represent, the interests of the Indians.

Mr. ROWE. You state at the end of your statement that "it is the Nation's court system which has upheld the rights of the Indians when the Congress or the Executive has failed to perform the obligations properly." Do you feel that the Judicial Branch has been the fairest to the Indians, in general?

Mr. RAGSDALE. Well, I think that if you look at the long-term history of Indian affairs, even going back to Andrew Jackson's days when the Supreme Court ruled in our favor, although we weren't able to get the decision enforced, I think it is the Nation's court system that has always basically been the "keeper of the canary" from an Indian perspective, at least, when times are tough.

Senator DECONCINI. I'll have to interrupt and let Representative Campbell ask his questions because his time schedule is tight and he has to leave.

Mr. CAMPBELL. Thank you, Mr. Chairman. I don't have a lot of questions to ask. I do have to leave in a few moments, and again I want to thank you for inviting me to sit in today.

Mr. Secretary, were you here when I gave my opening statement?

Mr. RAGSDALE. No, sir; I wasn't. I'm sorry.

Mr. CAMPBELL. I will provide you with a copy of it.

I think what I tried to point out in that—if I can avoid the technical questions and leave those to counsel—we're trying to make a system which has some good and some bad into a better system. It just seems important to me that we don't confuse blame with accountability.

As I move around Indian country a great deal, as you do, too, I know that there is a perception out there on the focus of this committee. Perhaps on that focus they forget the other side of the coin, which is also our responsibility to the American taxpayers who pay the money to provide support to the Indian community, as well as our obligations under the trust responsibility to the Indians themselves.

I wanted to tell you that I'm just not very good at mincing words. You tell us in your testimony here that you're not here as a member of the Department of the Interior but as an individual and as an Indian person. I want to tell you, to set the record straight, that I'm hearing some rumors out there that I don't like about the direction of this committee.

I didn't mean to take this turn, Mr. Chairman, if I could just make a simple statement.

I think that if we have problems, we have to fix them. We shouldn't let it get smoke-screened by accusations and by the rumors, for whatever they are worth. I would like you, when you go back to your official capacity, to try to help squelch them because, as I understand it, there are some Indian leaders out there who are now saying that the members of this committee, or people here in Congress, are out to get them, that kind of thing, meaning out to get some Indians. That is simply unfair and untrue, and in my official capacity as a Congressman I am trying to tell Indian people that some Indian people may in fact be in trouble if they have violated the trust that we have placed in that office.

But it's not an indictment of Indian country, and nobody is out to "get" any Indian leaders. I would appreciate it when you go back to your official capacity if you would try to spread that word, that the focus of this committee is now and has been, in my opinion, very clearly to try to increase accountability and not to hurt any individual Indians.

Mr. Ragsdale. I agree with you totally, Mr. Congressman. Unfortunately—or fortunately, as the case may be—I've had a number of interviews with the press. I haven't seen much of what I've said printed, but I haven't perceived that of the committee's work in this regard. I think there is a concern because of the focus on some instances of corruption, but if there are reforms that need to be made, recognizing that there may be some vacuum or void in Federal law with respect to criminal law and personal accountability when people abuse their powers, then my sense is that the Indian community will support that.

This is based on my half-lifetime with Indian leaders. I think that there is always—and I think it is healthy to some extent—a little bit of a healthy paranoia that Indian leaders have with respect to when somebody is going to help us. Sometimes that healthy paranoia gets a little bit excited and tends to think that when there is some bad publicity about Indian affairs, that everybody is getting ready to turn on us. We've had some significant changes in Federal policy from Indians' perspective, when the do-gooders of the world and the interests who were working for their own interests as opposed to Indian interests have joined together and have effected significant changes in Federal policy which in the long run have not been good for the Indian people.

So I think that that's part of the reaction. But if we have some corruption in some of our tribal affairs or in Federal affairs, I don't think it would be fair to single out Indians as having cornered the market on corruption. In my home State of Oklahoma we have one of the biggest national scandals of corruption involving 199 of the 205 county commissioners in my home State. There wasn't any cry as a result of the indictment of those public officials who abused their power, that we ought to abolish the government of the State of Oklahoma or do away with the State framework for government. We simply threw the rascals out, to use a mild term, and put them in jail.

I think everybody, particularly the American public, perceives some sort of mystique about the Indian business. Everybody really gets tuned in to that. Occasionally when we make the headlines, I think there is possibly a tendency for people to think that's the way it is everywhere, and that's not the way it is everywhere.

Mr. Campbell. Well, I think we're on the same wavelength. I do appreciate your help in trying to help set that perception straight.

Mr. Chairman, thank you again for allowing me to sit in. I'm sorry that I do have to run.

Senator DeConcini. Congressman Campbell, thank you. And thank you for that statement because it means a great deal to this Senator, and I know it does to Senator McCain. Your reputation is very well known in Congress on many issues, and certainly on Indian issues. You are welcome back Monday, if you have time.

We will now go back to Mr. Rowe.

Mr. Rowe. Mr. Ragsdale, you talked about water settlements on page 5 of your statement.

What is the significance of water settlements to American Indians?

Mr. Ragsdale. Well, the significance of water settlements to American Indians, particularly in the west, in Senator DeConcini's home country, is that we have less than 7 inches of rain annually. Water is more valuable than gold. Unfortunately, with respect to Indian irrigation development, the United States has not been able to fulfill many of its commitments with respect to development of Indian irrigation works over the last century. So the posture—the Indians being a practical people, and the fact that everybody in the west wants to develop water—is basically reliant on Federal irrigation projects to have the water developed. Because people need to know what the Indian water rights are, what we're seeing in the west is settlement negotiations where the Indian interest and the dominant society interest for practical reasons dovetail to foster settlement of Indian water rights so that the development of the non-Indian and the Indian interest in water can proceed.

Mr. ROWE. You refer to the Colorado River Indian Irrigation Project as being the oldest Federal irrigation project, 1867.

Mr. RAGSDALE. That's correct.

Mr. ROWE. That's not complete, is that correct?

Mr. RAGSDALE. That's correct. It's not complete.

Mr. ROWE. Why is that, from your perspective?

Mr. RAGSDALE. Well, from my perspective when you represent less than one-half of 1 percent of the Nation's population and you do not capture the interest of the dominant society as a practical matter, and when you're competing with funds from an Indian affairs budget that goes from soup to nuts, you don't have to be an atomic scientist to figure out why we don't have most of our projects complete.

Mr. ROWE. Let me ask you a question about water settlements. Traditionally when there is a settlement, aren't the funds taken directly out of the BIA budget?

Mr. RAGSDALE. There has been a pattern starting with the Ak-Chin water settlement, one of our first water settlements, that the dilemma—which they call the "too good a deal dilemma"—when the Ak-Chin community got that piece of legislation, the dilemma on the part of the Executive was, "How are we going to pay for this? And who is going to pay for it?"

So over a period of time, as it turned out, I think the Indians got their water rights settled and got a good deal out of it eventually, but the funding problem was a major concern, for us to be able to achieve the settlement that was intended by the Federal legislation.

Mr. ROWE. When the money is appropriated out of the BIA budget, aren't you faced with a conflict of trying to help that one tribe with that water settlement when the money has to come off the bottom line of the BIA budget——

Mr. RAGSDALE. At the expense of other Indian programs? Yes.

Mr. ROWE. Well, what happens when x millions of dollars are appropriated? How is that taken out of the budget?

Mr. RAGSDALE. I think this is a problem that hopefully the Congress and the Executive will deal with, because we currently have a number of projects, including one from Congressman Campbell's home district, that cause us the tension that I referred to before.

There have been a number of other settlements. Basically, the settlements have been borne out of the Bureau of Indian Affairs' budget and the Bureau of Reclamation's budget. The Bureau of

Reclamation can advocate their own interests, but I would have to say in fairness that they face that same kind of dilemma with regard to water projects. I would venture to say that Senator DeConcini has the same kind of concerns and competing political interests in his home State when you have this dilemma, that we have the obligation to develop the Indian water. If it is being borne by the Bureau of Reclamation's project budget, the spin-off of that will be to take away some of the other interests, which gives him and other people in the State of Arizona some real political problems.

Mr. Rowe. But there have been water settlements where the net result has been less money for schools, less money for health, less money for housing for all the tribes as a result of the money coming directly out of the BIA budget?

Mr. Ragsdale. I probably ought to get back into my official capacity. That would be a fair analysis to make, I think, overall.

Mr. Rowe. Secretary McLaughlin will be appearing this afternoon. Are you familiar with the working group that she put together during her tenure as Undersecretary?

Mr. Ragsdale. I did not have any personal experience. I worked on the Ak-Chin project prior to Secretary McLaughlin being in Interior. I am familiar with the concept and how they try to orchestrate or coordinate the settlement of Indian water rights.

Mr. Rowe. Well, we'll be hearing from her, but based on your tenure in Washington these last few years has there been a similar group charged with that responsibility, to try to have coordinated policymaking in water rights, not just as it affects American Indians but for all interests?

Mr. Ragsdale. In my experience this last year it has been an ad hoc type of approach. I must say that the Undersecretary has been advocating very strongly to come to closure with an overall Federal water policy so that we can deal with these settlements that are coming up, since we are advocating them as a matter of policy.

Mr. Rowe. Mr. Ragsdale, I am going to turn the questioning over now to Associate Counsel Mickum.

You do state, and I believe he is going to question you in this area, that more recently you think that on balance there hasn't been as good representation legally for American Indians at the Department of the Interior. You state that in your statement, and Mr. Mickum is now going to question you in that area.

Mr. Mickum. Good afternoon, Mr. Ragsdale.

I think this morning's panel tended to focus on the interaction of the Department of Justice and their involvement in legal representation. I'd like to focus on the legal representation being provided by the Solicitor's Office.

Does BIA consider the Division of Indian Affairs to be its legal advisers?

Mr. Ragsdale. I consider personally that those are our expert legal advisers, yes.

Mr. Mickum. Okay. Do you believe that the Division of Indian Affairs ought to function as advocate for Indian claims where those claims are reasonable?

Mr. Ragsdale. I believe that they should, but I want to make it clear that I don't think that that should be some sort of knee-jerk or rapid advocacy. I think that the attorneys have a responsibility to explain both sides of the issue and offer an opinion as to where they think we need to be, and leave the policy determination of what we're going to advance or push up to the decisionmakers, meaning the Assistant Secretary and the Secretary.

Mr. MICKUM. Ideally, how would you like to see the interaction between your office and the Division of Indian Affairs?

Mr. RAGSDALE. I don't know if there's an ideal situation, but it's been my practice to use the existing system, both formally and informally. I like to be able to counsel with attorneys on any sort of operational responsibility that I may be engaged in.

At least from my perspective as someone who has been involved more in the execution of policy for most of my career, one of the services that our legal advisers need to engage in is to affirmatively speak to us as to what kind of conflicts they may be seeing us getting involved or engaged in. In other words, I think we should have a free give-and-take kind of attorney-client relationship. It becomes more formal and a more formal type of process on policy matters because of the stakes on a particular issue, but on a day-to-day basis I think they should be completely cognizant of our operations and we should feel free to ask them for advice on anything we want to and they should feel free to give advice on anything that they want to. I think that's just a healthy attorney-client relationship. I think that's the way it should work.

Mr. MICKUM. Is that the way the relationship is operating now?

Mr. RAGSDALE. The relationship is at least operating that way at my level. The attorneys are providing that kind of advice to me personally, but my understanding is that that's not in accord with the specific direction that they've been given by their superiors within the Office of the Solicitor. They have been courageous enough to—and I gather it has taken some courage, because I think there is a formal instruction to them—they've been courageous enough to offer advice and be willing to come down and give advice either at my request or Assistant Secretary Swimmer's request.

Mr. MICKUM. So is it fair to state that Assistant Solicitors have indicated to you that they have been instructed not to have direct contact with your office?

Mr. RAGSDALE. My understanding of the instruction is that they are not to make direct contact with our office except by going through channels.

Mr. MICKUM. Has this restricted access hindered your ability to carry out your duties in any regard?

Mr. RAGSDALE. Well, I couldn't say it has hindered my ability because I've still gotten the advice from the attorneys informally, or whatever you want to call it, in my personal instance. But I was fortunate that I had a boss who was an attorney who was up on the forefront or the cutting edge of the high-level policy decisions. I can say—and he can speak for himself—that I was disturbed one evening when I walked into his office and he was having to be his own lawyer and work to about 11 o'clock at night to fight on an issue that he felt strongly on. I felt it inappropriate for the Assistant Secretary to have to do that. We were fortunate we had an attorney as Assistant Secretary at the time, although I am not a big fan of attorneys in most instances. I will say that for the record. [Laughter.]

Mr. MICKUM. At a minimum what duties are imposed on the Solicitor's Office as a result of fiduciary duties that are owed to American Indians?

Mr. RAGSDALE. Well, I think they have the same duties that we do, except that they may have an extraordinary duty, and that is to ensure that everybody abides by the law. That's the charge of most attorneys, to make sure that you keep your operations legal.

Mr. MICKUM. So at the very least you would expect the division to act as advocates for the Indians where claims are reasonable?

Mr. RAGSDALE. I think so. I think that people who work directly in the Indian business—you know, I say that everybody has the Federal responsibility as a matter of law, but as a practical matter the people who are engaged in the business on a day-to-day basis, given the complexity of the relationships in 31 different States and so on, if they don't and if we don't, who will in the Federal Government? Who will? Who would be versed well enough to do it unless they just took it on as a personal interest, given the many responsibilities that other Federal agencies have?

Mr. MICKUM. Would you expect that the Solicitor's Office would refrain from taking a position that was harmful to Indian interests if it wasn't necessary to do so?

Mr. RAGSDALE. Yes; but I would qualify that. Being in this business for the total time that I've been, I think we have to be practical and recognize that there are competing interests. I would expect the attorneys serving the Assistant Secretary and the Bureau client to be very advocative but not unrealistic. But the Secretary does have many responsibilities. He has stewardship responsibilities and trust responsibilities, and often times they do conflict.

So those duties have to be weighed and balanced and measured out in accordance with the trusteeship requirement and the stewardship requirement. From my personal perspective I think there is a higher duty to the Indians as a matter of law, but those things do have to be balanced. At a minimum the department should not be perceived to be looking in the direction of how to limit rights.

Mr. MICKUM. Are you aware that the Solicitor has advocated any positions that were in fact harmful to Indian interests?

Mr. RAGSDALE. Well, understand my personal interest and probably my personal bias, just being engaged in the business for so long. There have been a couple of decisions on a couple of issues that I had the impression that at the higher level in the Solicitor's Office there was a tendency to limit the government-to-government relationship or limit the trust responsibility in favor of other interests. That's just an impression. I couldn't make a professional judgment.

Mr. MICKUM. Based on your experience, and recognizing that you are testifying in your personal capacity, are you concerned at the present time with the legal representation that is being provided to Indian interests by the Solicitor's Office?

Mr. RAGSDALE. After acting for only about 3 weeks, I must say that I do get a hearing on Indian issues that come up, or at least I have since I have been here in this capacity.

I guess my concern would be that if I had not been given the straightforward Indian legal advice so that I could then measure that against what other filter the Secretary and the various offices of the department have to take into account, I don't know that I could fairly represent the Indian interests. If I get an opinion at the highest level that has already been formulated, and given the many conflicts that the Assistant Secretary and I have on day-to-day stuff, if it is not brought straight to my attention, then I am going to lose it. There is going to be a tendency that we're going to lose it just because we're ignorant of the other side of the argument.

Mr. MICKUM. Are you aware that any pressure is being brought to bear on the Assistant Solicitors within the Division of Indian Affairs to temper their advocacy or tone it down?

Mr. RAGSDALE. Well, my impression would be that when attorneys have to come down—they come down the stairs—come down and visit the Assistant Secretary sort of on the Q.T., or go to great pains to try to give us the other side of the argument, that there's some tension there. I don't know whether or not that has hurt us a great deal in the exercise of our responsibilities, but it's not a situation that one would normally desire, in my view.

Mr. MICKUM. Have you been told that cases are being transferred from Assistants?

Mr. RAGSDALE. I have been told that cases are being reviewed by other attorneys representing other interests within the department. That's what I've been told. I can't corroborate it.

Mr. MICKUM. Let me ask you, in your opinion can an Indian tribe whose sole legal representation is through the Solicitor's Office of the United States Government be guaranteed effective legal representation?

Mr. RAGSDALE. I wouldn't advise them to bet on the outcome. I don't think it would be healthy for them to do that ever. I represent the Federal Government, but anybody who has studied Indian history and the conflicting interests and the politics of Indian policy—I wouldn't advise any Indian tribe to rely solely on the Federal Government for legal representation. That has not been our history.

Mr. MICKUM. Thank you very much.

I have no further questions.

Senator DECONCINI. Thank you.

Mr. Ragsdale, first let me compliment you on your candidness and forthrightness. I understand you are here as a personal matter and not representing the department. I appreciate that distinction, but I also appreciate your willingness to give us your views because it is so hard to make that distinction and get it on the record. We're not here to bash the Solicitor or the BIA or anybody else. We just want the truth as we see it, and it is very helpful.

Your answer to the last question was indeed very interesting. Would you believe that it would be in the best interests to have a special legal office outside the Department of Justice to represent the Indian claims or their position?

Mr. RAGSDALE. The honest answer is that I don't know. I haven't talked to friends of mine in the legal profession, such as Tim Vollman, to search out what his thoughts are on it, but I wouldn't be opposed to it. What I would be concerned about is that we get all of the Indian rights issues segregated into some little box in the Federal Government, and that there might be a tendency that if they were segregated that way, it would make it much easier for the predominant interest to just stiff-arm and say, "Well, you know automatically how it's going to come from that office because it's their job."

One of the best rationales for keeping a lot of the Indian stuff in the Department of the Interior is that I think it's healthy for the Secretary to have, to have these conflicts.

Senator DeConcini. But I'm talking more about the legal issue.

Mr. Ragsdale. I know that, but I think it may also be true in the Department of Justice.

Senator DeConcini. Were you here when Mr. Cox testified?

Mr. Ragsdale. Yes, sir.

Senator DeConcini. He made a suggestion that it stay in the Department of Justice, and that maybe there be some specialists appointed. But if there is truly that conflict where the Solicitor takes the position that he will not proceed and go forward with the Indian position, then that separate contract counsel be available. What is your reaction to that as a kind of escape?

Mr. Ragsdale. The honest answer is that I'm not sure. One thought that I have had, and I don't know how you would do it, it might be healthy for those that are providing legal services to Indians within the Federal system, that some sort of periodic review or objective review of the attorneys and how they are practicing is carried out. That might be a healthy measure to ensure that the collective interests from whatever source are being weighed and balanced appropriately.

But I would defer to Mr. Vollman.

Senator DeConcini. The only reason I pressed you a little bit on it is, being the Acting Assistant Secretary for Indian Affairs, you have to go to counsel, and I'm only looking for ideas—if you really find the conflict between the trust and legal representation, how do you then pull that out of the Solicitor's Office or out of the Department of Justice and be sure that they are represented? Even if they lose, even if they've got a bad case, my own reaction is that even if they've got a bad case and they can't make the case, somebody under the trust responsibility has to make that bad case as you do if you're appointed to represent an indigent defendant. You don't have to get him off, but you have to be sure that his or her Constitutional rights are preserved.

That's what troubles me with this, not finding a way to do that even if it's a bad situation or an unwinnable case.

Mr. Ragsdale. I understand. There is maybe some way to institutionalize keeping the canary healthy.

Senator DeConcini. Well, thank you very much, Mr. Ragsdale. We appreciate your being here. We will see you Monday afternoon.

Mr. Ragsdale. Okay. Thank you.

Senator DeConcini. Our next witness will be Mr. Ross Swimmer, former Assistant Secretary for Indian Affairs.

[Witness sworn.]

Senator DECONCINI. We anticipate Mr. Swimmer helping us with the views of the BIA in general in what areas of reform he may have.

Do you have a statement, Mr. Swimmer?

Mr. SWIMMER. Yes; I do. I would submit it for the record if I could, please.

Senator DECONCINI. Without objection it will appear in the record. Do you want to summarize it or make an opening statement?

Mr. SWIMMER. Yes; I would like to make a summary opening statement.

Senator DECONCINI. Let me ask Senator Nickles if he wants to make any opening statement.

Senator NICKLES. No, Mr. Chairman; but just again to thank you for allowing me to participate and sit in on the hearings. I again compliment you and the committee for the work you have done, and I look forward to hearing Ross Swimmer, who I think had a very difficult job as Assistant Secretary. I also think he did a very good job, and I applaud his efforts in trying to assist Indian people throughout the United States.

Senator DECONCINI. Mr. Swimmer, I understand, just for the record, that you are going to testify primarily today on the relationship of the Assistant Secretary for Indian Affairs and the BIA and Department of the Interior versus the Solicitors and those problems. We may ask you to come back as to the BIA ones.

Mr. SWIMMER. Sure.

Senator DECONCINI. Please proceed.

TESTIMONY OF ROSS SWIMMER, FORMER ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. SWIMMER. I appreciate this opportunity. I am Ross Swimmer; I just completed a 3-year term with the Bureau of Indian Affairs as the Assistant Secretary in the Department of the Interior. I presently am in the private practice of law with the firm of Hall, Estill, Hardwick, Gable, Golden and Nelson in Tulsa, Oklahoma.

I will say that it has been an enjoyable experience to return home. I won't say that the experience wasn't worthwhile while I was here.

During the time that I was here, I was fortunate to work for the Secretary of the Interior, Don Hodel, who took his responsibilities regarding Indian affairs very seriously, and the entire department. When I came into the department he gave me pretty much free rein to work with Indian issues and develop Indian policy and to advance those issues to his level at any time. In fact, on many occasions when issues came up that were ancillary to Indian affairs but might have an impact, he asked the other Assistant Secretaries to be sure that I was informed and had the opportunity to speak to those.

During that time we advanced a number of issues: sovereignty issues, taxation issues, water rights, jurisdictional questions. In many of these we were successful. We had to face, and continue to face, the obvious problems that are here in Indian country and in the Government as it tries to play out its role of trustee. We have already identified that there are problems in the Bureau. There are some inept areas in the Bureau as there are in any agency of the Government. I think there has been some discussion about Congressional micromanagement of the Bureau and Indian affairs. We have even talked about tribal corruption, and I would echo very strongly what was said earlier today by Congressman Campbell and by Mr. Ragsdale, that in no way should that issue reflect on our final decisionmaking concerning the action on sovereignty or the actions we might take or solutions that we might come up with to tribal problems in Indian country.

I would like to be on the record that I firmly support and believe that honest, fair tribal government is going to be a major part of the solution to whatever solutions come out of this particular review or investigation. I think we need to keep that up there on the table and not even consider that there is another way of doing business, but there are things that can be done, just as Mr. Ragsdale testified to. When you find there is corruption, you root it out. You take care of it. If necessary, you enact the criminal laws to handle it.

We have also seen jurisdictional conflicts. We've seen problems with delivery of services, as we have heard in testimony on education, child abuse, and whatever. We've seen the conflicts in delivery of services by other Federal agencies, problems with taxes and that conflict as it develops with State and local government.

When we focus on the decisionmaking at the Federal level we often find conflicting policies. We find that on the one hand in the Department of the Interior we are called on to act as the landlord for the Federal Government's property interest, but then on the other hand, we are immediately called on to act as a trustee, as a titleholder, to hold in trust for the benefit of a group of other people and Indian tribes. And as Mr. Ragsdale testified, I believe that those are two very different relationships that are in the Department of the Interior and that have to be treated that way.

Some of the solutions that I have looked at—I have dozens of ideas, but frankly, as we get down to this legal and conflict issue within the department, one thing I would like to put on the table right away is the confirmation process. There has already been established a conflict within the Congressional branch itself. There is a conflict between the Senate Energy and Natural Resource Committee and the Senate Select Committee on Indian Affairs. The Senate Select Committee on Indian Affairs is a proponent of tribal sovereignty. It always has been. Under Senator Inouye and your leadership it has promoted the idea of tribal independence and tribal sovereignty in doing things. If they are going to do things as a tribe, they are going to have to have some of those attributes of sovereignty like the ability to tax, the ability to regulate, the ability to protect their resource base.

On the other hand the Senate Energy and Natural Resource Committee is very concerned with the development of the Nation's energy and the development of the Nation's land policy as we administer it in the Department of the Interior. But when I say the confirmation process, if you have someone who is the Assistant Secretary for Indian Affairs, or Solicitor of the department, or the Secretary, who is appearing before the Senate Energy Committee and he is asked how he is going to protect and promote the welfare of the country, the energy policy and everything else, his response often times, almost, has to be conflicting with what he would say if the Senate Select Committee on Indian Affairs asked the question, "Are you going to protect the interest of the Indian tribes to the fullest?" Immediately, they've got that conflict.

So I would just suggest that if people who appear before the Congress in a confirmation-type process are encouraged in that process to look out after the interest of Indian issues and Indian people and Indian tribes, it could make a difference in how that translates to their performance in the Department of the Interior or the Department of Justice.

More tribal involvement at the Solicitor's level with their attorneys is needed—the Solicitor in truth represents the Department of the Interior. It doesn't represent Indian tribes. It represents the Department of the Interior as a trustee, however, for Indian tribes and Indian interests. It is extremely important that I think we bring in the beneficiary party to some of these discussions. It's a little unfair for the Solicitor and the agency, with all of the conflicts that we have described, to sit down and negotiate a policy or a legal position that is going to be taken, and then tell the beneficiary, "I don't want to hear from you. We've made up our minds."

The beneficiary in these cases, because it is so important, needs to be a part of that ultimate decision-making and should have full access to the Solicitors within the Department of the Interior or the Department of Justice, particularly if there is going to be a decision that is going to be adverse, as was mentioned earlier by Reid Chambers. If he comes to the Solicitor's Office and says, "Look, I've got a client; I want to advocate this particular position," the department says, "Fine, we'll take a look at it." Later on they make a decision that says, well, "We've decided that we can't support Reid's position," or the tribe's position, his client.

He should be involved in that. It is my position that the attorney representing that tribe should at least have the opportunity to make his argument to the Solicitor directly and not simply be told, "Well, we've decided that we can't support it. If you want to, go ahead as independent legal counsel." But I think it's extremely important that the beneficiary does have some opportunity to present his or her case.

Policy conflicts often go to Department of Justice for resolution. We may have to look at Justice more as we have conflicts between the Department of Agriculture and the Department of the Interior. These come up quite frequently because often times reservations are bordered by forest lands or Department of Agriculture lands, as well as our own BLM lands and others, of course.

When we have these internal conflicts, perhaps the Department of Justice should be an arbiter in this regard and the issue should go over there before a final decision or recommendation on policy is made at any of the agencies.

I do not support the idea of a trust counsel. I think that as soon as we have set up a trust counsel we have also set up the rest of the Federal Government in opposition. If the Department of the Interior is let off the hook, so to speak, in exchange for a trust counsel who is going to advocate for Indians, you have the whole group of Interior lawyers who are then free to take the opposite position. It's just not going to be an equal battle.

In the past in the restructuring of the Bureau of Indian Affairs I have advocated that perhaps a full-blown trust agency of some kind with adequate staffing of lawyers and what have you be set up to handle all of the trust issues. The third of the BIA's budget dealing with land, minerals, water, money, should be separated from the social services side of the Bureau dealing with education, social services, human services, because it is such an important area of the law and important area of Indian advocacy that these trust issues do take on a life of their own. It could be within the Department of the Interior even, or it could be a separate agency, but not simply an independent trust counsel concept that is going to be doing battle then with all of the other attorneys.

The last thing I would like to mention as a possible solution is what was brought up by the Indian leadership when they met with the President a month or so ago, and that is the concept of a White House presence, a counsel of some kind, an Indian presence. Not just an Indian desk, but someone who is in an advocacy position for policy that can use the weight of the White House, perhaps chaired by the Vice President, who could bring together the Secretaries or the Assistant Secretary-level people that are dealing with Indian issues, and push on issues that are important to Indian country that often times get covered up in those different agencies because they are such a small part of the agency's total budget. The BIA's budget in Interior is approximately one-fourth of the Department. If you took the Indian budget in HHS, you'd be hard pressed to find it, it's so small, even though it is $1 or $2 billion. But it's small there. So you have a lot of other competing interests over there for the money and for the time and attention. That's critical, that there be somebody at the White House, that the President say, "This is important." President Nixon said it was important. Tremendous things happened during that administration. That signal alone, the President simply saying, "This is important; I recognize it; in fact, I'm going to set up a policy group to be committed to this issue because we want to make some change and to have some things happen," I think that would be a tremendous show of support to advance some of these different issues.

With that I would be more than happy to answer questions on any subject.

[Prepared statement of Mr. Swimmer appears in appendix.]

Senator DECONCINI. Thank you, Mr. Swimmer. Let me ask you this question.

I think you were here when Mr. Cox testified. I asked him whether or not there should be a separate office of trust representation. He said no, and the other witnesses also agreed with that. Then I posed the question, what do you do when you really do have a difference of opinion where the Solicitor says there is no case for the Indians different than what it is for the Government, but the Indians feel differently. He suggested that that might be relieved by providing contract counsel.

What do you think of that idea under such circumstances?

Mr. SWIMMER. I think that under any circumstances—I suppose this could be cited as a vested interest—but I think that under any circumstances the Indians or the Indian tribes should have outside legal counsel, just because of the issue that the Solicitors in Justice and Interior are working for the agencies.

But if you simply are able to do it—if you can just transfer the responsibility over to contract counsel, you have then lost the weight of the Federal position that is going to be extremely important to the Supreme Court. They're going to want to know what the Solicitors——

Senator DECONCINI. Let me just see if I can understand it. You're saying that if the Department of the Interior is addressing, say, a water claim, that before they address that, before they decide whether or not the Indian tribe involved has a claim, they ought to go get that Indian tribe, be sure they have counsel in the deliberation within the Department of the Interior, whether or not there is a valid claim that should be argued by the Government?

Mr. SWIMMER. Yes, early.

Senator DECONCINI. Very early, then?

Mr. SWIMMER. Very early.

Senator DECONCINI. Is that done?

Mr. SWIMMER. No; as a practical matter it is not done.

Senator DECONCINI. Unless a tribe happens to have counsel retained and they do it on their own?

Mr. SWIMMER. Even then it's not done as a practice. It is done if the tribe or the tribal attorney can get access. This is infrequent.

Senator DECONCINI. So lots of times the decisions are made there, as you said, without consultation with the beneficiary at all?

Mr. SWIMMER. That's right.

Senator DECONCINI. And certainly without their legal counsel at all?

Mr. SWIMMER. That's right.

Senator DECONCINI. Now, you mentioned your recommendation of a White House office. I don't mean to put you and Mr. Hodel on the spot, but did you folks make such a recommendation when you were in office? Was it under consideration or was it discussed? Did anybody in the White House ever take it up? I was surprised that there was no emphasis there, and I take some responsibility too because we just wrote a letter, since these hearings, underscoring the importance of that. As you mentioned, there was success under the Nixon administration in focusing on that, and here I sat for 8 years and never thought about pressing the administration or building a coalition up here to try to do that. I just wondered if you folks had discussed it and done anything about it.

Mr. SWIMMER. It was brought to the attention of the White House in an effort, as was expressed, to meet the government-to-government relationship. A branch of the Intergovernmental Affairs Office of the White House was devoted to Indian affairs and was very active in this regard.

My point, though, is that that kind of presence and the willingness of that office, which it was, to entertain tribal delegations and what have you is different than what I look at as essential policymaking functions and getting the Assistant Secretaries and the Secretary to focus on those issues.

The Office of Intergovernmental Affairs was this office that dealt with the mayors and the governors——

Senator DeConcini. I understand that. I'm talking about going further than that.

Mr. Swimmer. No.

Senator DeConcini. That just didn't——

Mr. Swimmer. We didn't go beyond that.

Senator DeConcini. Thank you.

Senator Nickles.

Senator Nickles. Mr. Chairman, very briefly just on that same line of thought.

Mr. Swimmer, on your comment concerning the Solicitor and Indian tribes, in communications with the Solicitor the decisions would usually be made without really working with them or consulting with them as far as how to pursue some of these cases?

Mr. Swimmer. There could be. In my opinion access was not afforded to the highest levels. Often times—and Mr. Vollmann can testify to the extent that he gets involved or is involved now, and he was the Associate Solicitor—but I think at the Assistant Solicitor level there is give and take with the lawyers representing Indian tribes, where Indian tribes have that representation. But what I found was that as we move up in the policy chain of the department it is more difficult, for various reasons—not hostility, but it is just more difficult—to entertain the differing opinions. They look at it as being the responsibility of the Solicitor to ferret these out.

But if you're going to get access to the Solicitor, who will make the final decision, it is very difficult to do because of time constraints and other things. So a lot of times once those legal-type policy cuts got made, you wouldn't have the advantage of hearing then from the attorneys for the Indian tribes before that decision got made. They didn't have the opportunity to testify.

Senator Nickles. You're urging that tribal councils would have access all the way through to the higher levels where the real decisions are made?

Mr. Swimmer. That's right.

Senator Nickles. I like your suggestion and would echo the thoughts of the Chairman concerning the White House office or policy group dealing with Indian affairs. I think that is a very good suggestion and one that we should implement.

Mr. Chairman, thank you again for allowing me to sit in.

Senator DeConcini. Thank you, Senator Nickles.

Mr. Rowe.

Mr. Rowe. Thank you.

Mr. Swimmer. Mr. Chairman, if I might make one other statement, in our Presidential Commission's report on Indian reservation economies in 1984 we did make that recommendation to the White House.

Senator DeConcini. It's been there, but just wasn't pushed or acknowledged.

Go ahead, Mr. Rowe.

Mr. Rowe. Thank you.

Mr. Swimmer, you make a statement that there was an attitude of "openness" and a "willingness" for discussing all issues at the Solicitor's Office when you first came in as Assistant Secretary, but then it changed. Could you describe the change?

Mr. SWIMMER. When I went in, I think that because the office had been vacant nearly 1 year—things were in somewhat of a state of disarray—I think the Solicitors had come in and had been providing a lot of advice and guidance to people in the Bureau, sort of free advice, on everything from administrative matters to legal issues. And I think that was helpful. They needed that, and it was very helpful to me coming into the department, particularly in the water area since I did not have a water law background, that even on issues dealing with policy we could talk with the Solicitors and hear the different legal theories and different policy theories.

From time to time it became obvious, both from the Solicitor advising me and from the different Assistant Solicitors, that this was time-consuming. It was burdensome. There was also a desire to cut back the contacts some and try to be more of a client-attorney relationship, to withdraw from sort of coming down to let us know that we have a problem and waiting to be more reactive to it.

I think in the last year or so it has been pretty much a situation that the Solicitors are there if we want to call on them, but if we don't call on them they're not going to be too involved in what we're doing, or they're not supposed to be involved in what we're doing unless we've asked for their assistance. This tends to create an atmosphere where I sometimes felt very reluctant to go to a Solicitor or an Assistant Solicitor and talk about a particular issue because I was fearful that the Solicitor didn't want to spend any time on that, or that the decision had already been made and why did we want to go ahead and burden the Assistant Secretary further with more ideas.

I often would make contact with Solicitors anyway. I never felt hesitant to do that, but the fact that they weren't coming to us then—I think Mr. Vollmann may testify some to this, about the importance of that in Oklahoma. I think a lot of the problems we experienced in the Oklahoma office were because the Bureau of Indian Affairs folks were not taking advantage of the Solicitor and the Solicitor was not going there with suggestions on how better to administer some of the realty affairs and what have you. And since Mr. Vollmann has been there he has made himself very available. He has even called the Bureau folks in to give them some training sessions on how to set up their administration better, and do things like that which are not technically legal work. He could be in the same position there and say, "Look, I'm in Tulsa. Give me a call if you need something." But he's been more proactive. He's trying to go in and avoid having problems come up for breach of trust or whatever by asserting himself into the situation instead of waiting until something happens and then being reactive to it.

That's the sort of impression I've had from the Solicitor's Office.

Mr. ROWE. Well, is it fair to say that the very lawyers in the Indian Division who serve your client, the Bureau of Indian Affairs, felt that there wasn't an open door to you and that they might be at risk if they approached you to discuss issues?

Mr. SWIMMER. I think that's right. On occasion I had the impression from some of the attorneys that "We really shouldn't be talking to you. Bring it up through channels and we'll discuss it. The Solicitor would like somebody else to look at that issue. We've been asked not to do it, not to work on it any more. It has been transferred to so-and-so." I just felt more comfortable in dealing with the attorneys that knew the issue better.

Mr. Rowe. Well, does that have an effect not only on legal issues but also on policymaking decisions?

Mr. Swimmer. Well, it can have some because it's hard to separate them entirely. As I said, just in the water area alone, it is difficult for me to come in without having that water law background and pick up on policy issues as well as the legal issues because they do intertwine quite a bit there. So I relied quite a lot on the different Assistant Solicitors in the office that dealt with water issues.

Mr. Rowe. Did you have the opportunity to review the testimony of Mr. Chambers and Mr. Claiborne who testified on the first day of the hearings?

Mr. Swimmer. Yes.

Mr. Rowe. Mr. Chambers said at one point in his testimony that he had the feeling as a private practitioner in current times that in going over to the Department of the Interior, he felt as though they were the judges and not the advocates. What's your perspective on that point?

Mr. Swimmer. I think that what he experienced is different from what we have experienced in the last 3 years. I can't speak before that in this administration, but I think it's something that changes with the action of the top people in how they want to conduct the office. In the present case, he's right. There's a marked difference from that. The attorneys are not presented as advocates for a particular issue; or, in an Indian tribal issue context, they may be advocates for their position, but what eventually happens and what has happened in the recent past is that that advocacy reaches a level of policy-makers who then have to sort out the different policy issues within the Department of the Interior and select one to go forward with. By doing that the Indian issue may fall out very early in that process and be lost entirely in favor of a national energy policy or a national land-leasing policy or any number of policies that will take precedence and avoid bringing this Indian advocacy policy and legal issue forward.

So it just falls out, and there is a judgmental thing that happens there. It is just determined that the Indian position, say, regarding valuation of royalties versus trying to promote an energy policy or an Indian position on valuation of land-leasing or on water rights or something else, that we're not going to go forward with that because we don't believe that is going to fit overall with the policy. And if we are advocating it for Indians, it's going to conflict. It's going to give us a problem. So if the Indians want to pursue it, they can pursue it; but as a department, we make that cut and say we're not going to pursue it.

Mr. Rowe. Well, there were times when you felt you had to go to the Department of Justice. You initiated discussions with the Department of Justice. You mentioned that in your statement, because you felt that you would get a fairer reading at the Department of Justice more than with your own lawyers in the Solicitor's office. When did that occur?

Mr. Swimmer. Well, that would occur, for instance, when—as I described the process, let's say the Indian position drops out, and yet I still feel strongly that we should go forward and advance the cause, maybe in an amicus brief. Maybe we should be going up on an appeal of some kind, whereas the Solicitor or the department says, "Well, we're not going to do that because we think it's better not to." I had no hesitancy to call Department of Justice and say, "Look, we're not going to go forward with this issue but I really think it's something that you ought to look at." And Department of Justice may be doing something on that, and I would say that I would support that position.

Mr. ROWE. Were there instances when they followed up that suggestion and in fact took a position that, for lack of a better phrase, was pro-Indian and at odds with your own department's recommendations?

Mr. SWIMMER. Yes; there were a couple of instances. I think the one that probably comes to mind is the Colorado River tribal water dispute with the Metropolitan Water District. I don't remember the exact circumstances now, but there was a real conflict in how we wanted to approach that and what should be put in the brief. I felt strongly about it, and that was where I was trying to do part of my own research because I knew that we had made a cut in the Solicitor's Office and there wasn't any point in going in and talking to them, but I still felt like somebody should advance this issue, and Department of Justice eventually worked out a compromise that did include the language we needed to protect what I felt were the tribal interests there.

Mr. ROWE. Just a couple more questions. Do you feel that it is essential that, at the very least, the associate solicitor for Indian Affairs be an individual who has the commitment and the experience in Indian affairs so that he or she can adequately represent the American Indians' legal interests?

Mr. SWIMMER. No question about it. That's like asking a tax lawyer to go in and represent a criminal defendant, or vice versa.

Mr. ROWE. Did you have the ability to pick that person when you were the Assistant Secretary?

Mr. SWIMMER. No.

Mr. ROWE. And does the individual now, Mr. Dennis Daugherty, have that experience, to your knowledge?

Mr. SWIMMER. As far as I know, since Mr. Vollmann left the department, none of the followup associate solicitors have had experience in Indian law.

Mr. ROWE. Last question. Mr. Vollmann is going to be appearing this afternoon. You cite him as an individual who made that process work the best during your tenure. In broad strokes, what would be the difference between Mr. Vollmann's tenure as compared to the more present-day experience?

Mr. SWIMMER. Well, the fundamental thing was experience. Mr. Vollmann was a trained attorney and had focused on Indian law his entire legal career. He knew the cases. He knew what he was advocating. As I was saying, it's a very unique area of law. It doesn't lend itself to ease of review and making determinations.

The second thing was, of course, his advocacy in an era where he felt very comfortable about working closely with me on issues and developing those issues. If we had conflicts, we could go up and get them worked out with the Solicitor.

Mr. ROWE. One last question. The present Solicitor, Mr. Tarr, did he ever tell you that he did not trust the lawyers in the Indian division and in fact wanted their work to be reviewed by other divisions?

Mr. SWIMMER. Well, he had lost confidence in them. As I understand it, most of the work that is being done now in the Indian division is being reviewed by other lawyers from different divisions of the Solicitor's Office.

Mr. ROWE. And do you feel that's a double standard?

Mr. SWIMMER. Well, I have my reservations about that, no pun intended. I think that the Indian Solicitors are mostly well-versed in the law. The ones whose work is being reviewed—there needs to be a focal point. Certainly, if he doesn't necessarily like the decision that's coming down, it's not a problem for someone else to do a brief on it and give the Solicitor a bifurcated brief, but to say "I don't have any confidence in what you're doing; I'm going to have somebody else look at it and re-do it," that's really not giving them a level playing field if both feel comfortable in going to him and arguing their positions. He's simply saying to one, "I don't believe you," and to the other one, "I'm going to take your word for it." So that doesn't work well.

Mr. ROWE. Well, at a minimum shouldn't the Indians at least be on a level playing field when you look at the legal principles of trust beneficiary?

Mr. SWIMMER. Oh, sure. There has to be an advocacy position in the Solicitor's Office. There just has to be.

Mr. ROWE. Thank you.

Senator DECONCINI. Mr. Swimmer, you say that you need people with experience. In your judgment is that type of lawyers available that will come to work as assistant solicitors with that experience in Indian law?

Mr. SWIMMER. I don't know, and that might be part of the problem. I just don't know what the market is out there. I know it's very difficult to recruit people into the Washington office and the Solicitor's Office at the kind of salaries that are being offered.

Senator DECONCINI. Just in the whole office, you mean?

Mr. SWIMMER. Yes, and there are not a lot of Indian law experts out there. There are more and more, and in recent years there have been more who have graduated from law schools, but I'm talking about a 10-, 15-, 20-year attorney; Mr. Vollmann, for instance, using just his background and his credentials, that's the kind of person I would recruit for Indian affairs.

Senator DECONCINI. Well, I would, too. I just wondered, just to be fair to those who are there, if they are not available. I just didn't know if you had an opinion on it or not.

Mr. SWIMMER. I think they could be found because I also think that people dealing with Indian legal issues often times will take less money in order to advance those particular issues if they can be in a position to do that.

I had recommended a couple of people to the department, but they were seen as not acceptable.

Mr. ROWE. Were the individuals who you recommended in general people with that experience and commitment?

Mr. SWIMMER. Well, unfortunately they didn't have the length of time that I mentioned, but they were 5- or 6-year attorneys who had been devoted almost entirely to Indian law.

Mr. ROWE. Well, the candidates who took the jobs that they didn't get, what was their background and experience, if you know?

Mr. SWIMMER. They didn't have any Indian law background.

Mr. ROWE. None whatsoever?

Mr. SWIMMER. No.

Mr. ROWE. So from your standpoint somebody with 5 years' experience——

Mr. SWIMMER. Would be better than just bringing in someone who has no experience at all.

Mr. ROWE. Thank you.

Senator DECONCINI. Thank you very much, Mr. Swimmer, for your testimony. It has been very helpful.

The committee will stand in recess until 3 p.m. this afternoon.

[Whereupon, at 12:55 p.m., the committee recessed, to reconvene at 3 p.m. this same day.]

AFTERNOON SESSION—3 P.M.

Senator DECONCINI. The Special Committee on Investigations will come to order.

If I could ask all of you to rise—Mr. Swimmer, you've already been sworn—I'd like to give you the oath, please.

[Witnesses sworn.]

Senator DECONCINI. I want to express for the record the great appreciation of the witnesses here, particularly Secretary McLaughlin for taking the time, but all of you have devoted so much time to your jobs and being with us today.

We have a most unfortunate problem logistically. Senator McCain, who is going to chair this, was in the confirmation hearings. I believe they're meeting today with Mr. Tower and may vote later this afternoon. He couldn't get back. I am chairman for the first time of the Commission on Security and Cooperation in Europe, known as the Helsinki Commission. We are having our first meeting right now with the briefings from the Vienna Conference. I am going to have to leave. I do apologize.

I want to reassure you that it is not a lack of interest or significance as to your testimony that there will not be a senator here. This is the first time it's happened and I don't think it will happen again.

The staff, however, under our procedures do the bulk of the questioning anyway. The senators and other visiting congressmen do obviously read the testimony and questions, but we want to be sure to lay a record here in some very specific areas, and that's why yield to counsel as a policy here to begin with.

I'm going to ask Mr. Ballen, the staff director of the committee, to proceed this afternoon. Again, my thanks.

Mr. Ballen.

Mr. BALLEN. Thank you very much, Mr. Chairman.

I welcome all of you again here today, and I would like to yield to Mr. Rowe for further questioning.

Mr. ROWE. Just a few followup questions to Mr. Swimmer: in your statement, Mr. Swimmer, you make reference to the *Sandia Pueblo* decision which ended up as a Solicitor's opinion. Could you discuss the Sandia Pueblo request and what followed during the time period when you were the Assistant Secretary for Indian Affairs?

Mr. SWIMMER. The *Sandia Pueblo* decision came to me shortly after I was confirmed the early part of 1986 and presented its proposed boundary issue dispute, concern, suggesting that the boundary of the reservation had been mistakenly placed by the surveyor and should be moved to include what now was some forest land, Forest Service land or Federal land. It was a boundary issue between Federal land and tribal land.

I heard them out and they had a pretty convincing case without seeing the other side or going into the facts of it at that point. I understand they had been in a couple of years before that talking about this issue.

I took the issue to the Assistant Solicitor who was then Tim Vollmann, on my left here. We discussed it. I asked for the Solicitor to review the facts that they had been presented to me concerning the interpretation of the boundary and all of that.

Mr. ROWE. At that point Mr. Vollmann was then the Associate Solicitor?

Mr. SWIMMER. He was the Associate Solicitor for Indian Affairs still at that time.

The tribe continued to present information as requested by the parties, and it wasn't until about 1 year later—and during this 1986 period of time, it looked like the tribe had a pretty good case for a boundary issue which, it was our opinion, if the boundary has been misplaced, it could be changed by the Secretary with just a ministerial-type action by adjusting the survey, which was something that had been done before and is even being done as we speak on some other cases.

So if the facts of the case presented it to be just that, that it was simply a mistake, a scribner's error, a mistake in the way the survey was drawn, or something, we thought that could be rectified.

As the issue was being discussed at the Solicitor's level and as more fact-finding happened, an unfortunate thing took place. The U.S. Forest Service found that the tribe was in talking to the Interior Department and that they were asking that this boundary be changed, and what have you, and in one meeting I had in New Mexico, the regional forester came to me and told me that it was a lot of nonsense and that the tribe really didn't have a claim and besides, if they did, if they pursued it, that the Forest Service couldn't avoid going public and letting people know that the tribe was going to try to take over this land.

I was kind of astounded at that reaction, but it wasn't but a few weeks later that the Forest Service did exactly that. They sent out notices or had press releases, or some form of public notice, advising landowners—some were landholders on this disputed land—advised them that the tribe was going to oust them and that they were asking to have it taken over, and raised a public alarm and I think directly caused then a lot of people who really would not be affected to a very great degree to go out and retain legal counsel and begin filing briefs with the Department and doing research of their own, and what have you.

Not that there should be anything kept from the public, there was an atmosphere, I think, of a willingness, an openness. The tribe had already notified everyone that was in this disputed area of what they were attempting to do. It wasn't something that had created a threat until the Forest Service had been involved in it.

Mr. ROWE. What time period was this, Mr. Swimmer?

Mr. SWIMMER. This was about 1967 then.

Mr. ROWE. 1987?

Mr. SWIMMER. 1987, I'm sorry, about 1 year after we started looking at it.

It took about another year, then, for the Solicitor's office to come down with an opinion. During that time Mr. Vollmann left and became regional solicitor for that area. The matter was still being handled in Washington, however, and——

Mr. ROWE. Was Mr. Vollmann involved in handling that matter as the relevant regional solicitor?

Mr. SWIMMER. I think it has stayed in Washington. I don't believe there was any action taken. It's my understanding, because just at the time that a decision was going to be made, I made contact with Mr. Vollmann to ask him what his feelings were about a decision that was going to go against the tribe, and he advised me then that he hadn't been involved in it since he left the Department. I presume that there was no regional involvement, although I have asked the Solicitor, following that discussion, a few days later, to make sure that he talked to Mr. Vollmann because I thought that Tim had some relevant data and some legal theories that should be explored before a decision was made.

In any event, the decision got made, and it got made not just on the facts, but there was a legal opinion rendered that concerned me, and it still does. That is the legal decision that was issued by the office simply states that the Secretary——

Mr. ROWE. Now——

Mr. SWIMMER. Pardon me.

Mr. ROWE. The office? The office of the Solicitor or the office of Indian Affairs?

Mr. SWIMMER. The Solicitor made the—I'm not sure of all the machinations within the Solicitor's office and how this surfaced, but the final opinion was a Solicitor's opinion.

Mr. ROWE. What is a Solicitor's opinion?

Mr. SWIMMER. Well, a Solicitor's opinion is basically the law for the Department. It's the guidance that we would have. It is the interpretation of what the law is and it's not subject to much debate beyond that.

Mr. ROWE. Are Solicitor's opinions relied on in judicial filings or——

Mr. SWIMMER. Very much so. The courts look at them, the policymakers look at them. It's pretty much the final word on an interpretation of a subject until a court overturns it or it could be withdrawn later on, but there would have to be a pretty strong, convincing evidence that the Solicitor was wrong in writing an opinion before it would be done.

Mr. Rowe. So it has strong precedential value, not to the degree——

Mr. Swimmer. Very, very much.

Mr. Rowe [continuing]. Of a court opinion, but just below that, because it's not a judicial pronouncement; is that——

Mr. Swimmer. That's true.

Mr. Rowe. Okay.

Mr. Swimmer. When the opinion—the facts can be debated back and forth probably for a long time, but one of the things that happened in the opinion was that there was also a legal opinion that was given along with the factfinding. The legal opinion, simply put, says the Secretary has no authority to make those ministerial type changes in Indian boundaries.

It related it back to the Indian Claims Commission Act which was passed in 1946 to give cause of action to Indian tribes to bring claims against the Government for a certain period of time. It said after that period of time all claims are barred.

It was my understanding—and I think that Indian legal scholars would agree—that that act was not meant to foreclose pre-existing or subsequent acts that could be done to remedy problems in Indian country. And particularly in a situation like this, the Secretary has always had the authority to make those ministerial changes. If he sees a survey that's a scriber's error, he can correct it.

What this opinion did, it foreclosed him from doing that. He can no longer change it, at least as to Indian boundaries. He can change it to Federal land boundaries still under the different provisions, but he can't do it as to Indian boundaries.

Conceivably, you could have a situation where you could diminish an Indian reservation, but he can't add to it as a result of an error. I just don't think that that is the state of the law. It very well might be, and the courts might eventually rule on it, but it was my opinion then, and I think that of some of the other solicitors, that that went a little too far in foreclosing it.

It also is my understanding that we had argued, the Solicitor's office itself had argued that very position before, and now even in pending cases and that previous cases that have been decided where the Secretary has adjusted boundaries not as a claim but simply as a discretionary act to correct mistake, it could have some very profound effect on how those cases now go forward or previous cases that are based on that Secretary's decision to change a boundary.

Mr. Rowe. So legal rationale does counter positions that the Department has taken through the Solicitor's office——

Mr. Swimmer. Yes.

Mr. Rowe [continuing]. Presumably in other matters?

Mr. Swimmer. Yes.

Mr. Rowe. You were actively involved in the beginning days of Sandia from what you have just said. How involved were you after Mr. Vollmann left? You mentioned that you had gotten Mr. Vollmann to work on a draft or to look at it when he was in Washington. Then he was transferred to Oklahoma, and we'll be hearing from Mr. Vollmann later.

Who did you talk to about the opinion after Mr. Vollmann left?

Mr. SWIMMER. Well, it stayed in the Solicitor's office, both the interpretation of the facts and then ultimately the legal issue. My work on it primarily dealt with checking from time to time to see how they were coming on the opinion.

We got a draft opinion that indicated that the Solicitor did not believe the facts justified moving the boundary, but said the Secretary had the authority to do so if the Secretary so chose. In other words, the Secretary would have an option. He would look at it and say, "Well, the facts don't justify it in our mind, but if you believe strongly that the boundary is wrong and should be changed, then you can change it, Mr. Secretary, if you want to."

A week after that opinion came down, then another opinion came down and said, not only do we disagree that the facts present themselves as such to change this boundary, but you don't even have the authority to change it if you want to.

Mr. ROWE. When was that?

Mr. SWIMMER. Oh, it's been about 2 months ago, 3 months ago.

Mr. ROWE. In late 1988?

Mr. SWIMMER. Early 1989 or late 1988; I don't recall exactly when.

Mr. ROWE. Well, did you have a chance to discuss your views before the decision was made by the Solicitor? Were you given the opportunity to explain your perspective on the opinion since you had been involved with it from day one?

Mr. SWIMMER. The decision got made by the Solicitor before we had the meeting with the Secretary. I was involved, asked to be able to present a view contrary, but the Solicitor's opinion had been written. I don't think that—I think the Secretary thought that the Solicitor was a lawyer and I wasn't the lawyer for the Department, and readily admit that. I was not doing the legal research on it. It was only information that I had independently that it appeared that this was going a little bit too far, but my argument was that at least this issue involving secretarial authority should be reviewed by some of the other assistant solicitors, particularly Tim Vollmann because of his early involvement in it and knowledge of the other cases that were similarly situated.

At the time the decision was made, it was pretty much complete. My input at that point was very little.

Mr. ROWE. Well, when did you have an opportunity to talk about it with Mr. Vollmann, before or after the decision was made, if you know?

Mr. SWIMMER. I think I was advised on a Thursday that a new opinion from the previous Monday had been written and was going to be presented to the Secretary for final review Monday morning.

I was back in Oklahoma that weekend. I called Mr. Vollmann and asked if he was aware that the opinion had come down from the Solicitor's office. He said he wasn't.

I said, "Well, I've got a copy of it. I want to go over it with you because I'm particularly concerned about a particular legal opinion in there on secretarial authority."

So he said, "Well, come on over and we'll talk about it."

I visited with him over the weekend, still felt strongly that the opinion misstated the secretarial authority issue. I went to the meeting Monday morning and argued that position. I believe that the Solicitor did contact Mr. Vollmann and talked to him about it, but still felt that the decision was sound and went ahead and issued it.

Mr. ROWE. Well, Mr. Swimmer, the opinion is dated December 9, 1988, which was a Friday.

Mr. SWIMMER. I think I got a draft copy of it either Thursday evening or Friday.

Mr. ROWE. You didn't meet with the Secretary until the following——

Mr. SWIMMER. Monday.

Mr. ROWE. So the decision had already been made, as far as you know, if the days——

Mr. SWIMMER. Well, that's not to say that on the Monday that if the parties came together and said, "Well, we just don't like it; we want you to go back and review the law again," that the Solicitor wouldn't change it. I think he had written the opinion all right and dated it, but we didn't really have a chance to come together and discuss it until that following Monday. I presume if he had been asked, he would certainly have changed it, reviewed it, and gone back over it.

The decision had come out of the Solicitor's office apparently on the 9th and was to be final.

Mr. ROWE. Is it fair to say that you were surprised at the fashion in which the opinion was handled because as the Assistant Secretary for Indian Affairs essentially you weren't consulted until the decision had been made?

Mr. SWIMMER. Well, see, I had received the other opinion the week—that same Monday before. The other opinion was quite different. So in a period of 3 or 4 days, the opinion was totally rewritten. This opinion that took 2 years to get out got rewritten in a matter of 3 or 4 days and was made available to me then to review just before the weekend with a policy decision meeting set for Monday.

Mr. ROWE. Do you know who was involved in the redrafting of that opinion from the time—do you know who worked on the drafting of the Solicitor's opinion for the Solicitor?

Mr. SWIMMER. Not directly. It was my understanding from talking with the Solicitor and some of the other attorneys that he had asked some people in another division of the Solicitor's office to look at the Sandia opinion and he had some questions about it. They came up with this theory on the Indian Claims Act and he felt like it was credible and wrote the opinion.

Mr. ROWE. So would those be attorneys outside of the Indian Division?

Mr. SWIMMER. Yes, Yes; the Solicitor's office is set up in several different divisions. One is Indian affairs; one is energy and resources, one general law, and like that.

Mr. ROWE. Mr. Mickum has one or two more questions.

Mr. MICKUM. Mr. Swimmer, could the case have been disposed of on its facts without having to address the issue of whether the Secretary had the power to correct erroneous patents or boundaries?

Mr. SWIMMER. Well, sure, that's the way it started. It was to be a review of the facts that had been presented to us by the tribal lawyers and see if we could concur in those facts, and if the facts came down that it really was an erroneous boundary, you could make a decision that the boundary should be changed or not changed, and that would be the end of it.

However, it doesn't create the finality necessarily that would be created with a Solicitor's opinion saying that the Secretary has no authority, because that binds future Secretaries, too, unless that opinion is overturned or the tribe is able to go to court on an abuse of discretion of something like that.

Mr. MICKUM. Would you characterize the Solicitor's actions as being unduly harmful to Indian interests when it simply wasn't necessary to do so?

Mr. SWIMMER. I wouldn't attribute any motives to the Solicitor in that regard. I think he feels that's what the law is, and I think it's one of those gray areas that you could say this might be something to hang our hat on to avoid this problem later on.

On the other hand, you could say just as easily this isn't—this is a legitimate discretionary position of the Secretary to adjust these boundaries and we've done it before and we'll do it here.

I don't know what his motive would be other than he felt like that was what the law as he was being—as it was presented to him.

Mr. MICKUM. I'm not really trying to discern what the Solicitor's motive was. I guess, given the country's trust responsibility to the Indians, I would characterize it, if you don't need to take a position that's harmful to a party to whom you owe a trust responsibility, you probably should refrain from doing so.

Mr. SWIMMER. There's that sort of body of law that says the in the interpretation of treaties and acts of Congress you will try to interpret those in favor of the Indians because they are obviously the less capable party of advancing their issues, so you want—I would think that you would want to try to look at the Indians' position in the most favorable light.

I do think that there was an option here to do that. I think that you could have looked at it more favorably.

As far as the law was concerned, not having to come down and eliminate secretarial discretion, that's something that's sort of a policy in the Department anyway. You don't want to limit the Secretary's discretion any more than you have to by a legal opinion.

Mr. ROWE. One last question: in your statement you say that the Solicitor's manual—and you're correct because I've reviewed that; this is a manual that the current Solicitor has put out fairly recently, in the last year. There is a provision in that one of the duties of the Solicitor's office is to "provide an array of options for policymaking."

You say in your statement that there is this duty. I gather that what you're saying now is, at least in the Sandia Pueblo matter, that those options were not presented to the Secretary from your standpoint.

Mr. SWIMMER. I got the impression in that opinion there was more favoritism given toward the policy of finality. In other words, let's make a cut and not leave it up to anyone else later on to look at. We're going to make a decision and kind of close it off from the Solicitor's level.

When you present the opinion the way it's presented to the Secretary, he has very little choice other than to accept the opinion. Not only is he limited in his options there, he's limited in the future cases as well as potential pending cases that are out there that are dealing with this same boundary-type discretionary interest.

Mr. ROWE. Thank you, Mr. Swimmer.

Mr. BALLEN. Secretary McLaughlin.

Mr. Rowe.

STATEMENT OF ANN DORE McLAUGHLIN, FORMER UNDER SECRETARY, DEPARTMENT OF THE INTERIOR; FORMER SECRETARY OF LABOR

Mr. ROWE. Secretary McLaughlin, would you like to read or summarize your opening statement?

Ms. McLAUGHLIN. It's not that long. If I might, I'll just go through it quickly.

Mr. ROWE. Fine. Please proceed.

Ms. McLAUGHLIN. Thank you, first of all, for inviting me to testify. I look forward not only to this session, but if I can be helpful in the future as well.

Understanding, as I told Mr. Rowe, that I am more recently from the Labor Department, I have reached back in my memory and I hope that I will be helpful to you from my Interior days.

I commend you for I think the work you are doing is essential. If this Nation's Indian people are to escape the cycle of poverty that continues to strangle their self-determination and economic development, then the management of the Federal trust responsibility needs tremendous improvement.

You've requested that I describe my experiences with managing the trust responsibility while at Interior. I thought I would start by suggesting that to understand that responsibility and how it fits with other programs at Interior, I would tell you an apocryphal river story that may illustrate a point that will be discussed later in my testimony and in Q&A.

Specifically, this river was discovered in a western State and the question of what to do with this recently-discovered river was brought to the Secretary of the Interior. The Bureau of Reclamation wanted to divert it and grow high-value crops with the water. The Fish and Wildlife and National Park Services wanted the river to be left in its pristine condition. The Geological Survey wanted to measure and study the river. The Bureau of Land Management and Minerals Management Service wanted to lease the bed of the river for mineral, oil, and gas development.

The controversy was resolved eventually when the Solicitor opined that the river was, in fact, owned by the Indians, and the Indians hadn't decided yet what they wanted to do with this resource.

It may sound at first amusing, but the dilemma of agencies in the same Department having conflicting mission responsibilities I think is unique to Interior. In other parts of the Federal Government where I have worked, the agencies and the department have complementary objectives and the challenge is not what to do, but how to accomplish the mission of that department in the most expeditious fashion.

At Interior, effective management requires identifying and surfacing the conflicts to assure that decisionmakers have a full range of viewpoints on the issues. In many cases we encountered serendipity where, through the dialog process, we were able then to find consensus.

To have a forum for these discussions that were needed in such a department environment, I created the water policy working group which was comprised of assistant secretaries for the various bureaus, the Solicitor, and chaired by the Under Secretary.

We used water because it was an integral part of so many of the cross-cutting conflicts that were found at the Interior Department. The group met regularly and dealt with such issues as dam safety, groundwater policy, Indian water claims settlements, efficiency of water use, wetlands policy, and the national water quality assessment.

For the group to work effectively, it was essential that the respective assistant secretaries assume an advocacy role on behalf of their constituencies. I understand that you've obviously just heard and heard this morning from Ross Swimmer and others. This afternoon after we testify, I believe Mr. Vollmann will testify.

I am pleased to say that in the water working group meetings, which both these gentlemen are very familiar with, Ross was an able, effective, and often persuasive spokesman for the Indian viewpoint, a fact that I think some Indian people don't recognize.

Also, Tim Vollmann and his staff provided the legal analysis that resulted in the water policy working group being what I considered to have been an honest broker for Indian water issues.

I want to dwell on this point of confrontation for a moment because it is very important, I think, to the deliberations of this committee.

Human nature leads us to avoid pain. The encounters in the water policy working group were often painful. I have been in four departments in the Government, and I find that career civil service people are eager to help and follow the policy directions of political appointees if those appointees communicate with them where they are trying to go.

So reaching down into the bureaucracy to identify, to surface, and resolve those cross-cutting conflicts was, in my estimation, the key to our success in Indian water claims settlements as well as in other areas.

If the lead responsibility for addressing a cross-cutting issue is delegated to an assistant secretary whose constituency has a stake in the outcome, that assistant secretary will avoid the pain of confrontation with an opposing viewpoint. The resultant outcome will not represent fairness, equity, or possible consensus.

With Indian issues, the lead assistant secretary concept results in far more pernicious discrimination. This is because the political maturity of the Indian peoples is not on a par with the sophisticated lobbying that we have seen from other constituencies.

For example, when an energy company, a conservation organization, or an irrigation district sees their Assistant Secretary failing on their behalf—and they know exactly what is happening—they marshal other political forces to support their cause. Indian peoples don't have the networks, contacts, or political clout to make a difference if their advocate can't get their position to the decision table. Thus, any management approach which does not assure a level playing field and a process for honest brokering will be far more disadvantageous to Indian people than to others.

I know you would like to hear about the process we used for Indian water claims settlements specifically in the context of the overall water policy group. I have with me today Mr. Michael Clinton who was at Interior my special assistant and also managed the Department's Indian water claims settlement program under my direction in the office of the Under Secretary.

The Salt River, Colorado Ute, San Luis Rey settlements passed by the Congress last year reflect his quiet, adept management of that program. I will have Mike describe the settlement negotiation process in which he was a manager and a participant in detail in 1 minute.

Before I close, I would like to share one other perspective. As I thought over what I might be saying to you today and I pondered the many glimpses of your challenge which I have seen firsthand, as an administrator, a generalist, and a participant in the public policy process. I have had a look at the role of Government in our lives through many windows—at EPA, the private sector, at Treasury, Interior, Labor, academia, and now in a nonprofit think tank, the Urban Institute.

Our focus, it seems to me, while I was at Interior was primarily on how to protect Indian natural resources. We hoped that the results would be promotion of tribal self-determination and economic self-sufficiency. But, more recently, and why I bring this up, my experience as the Secretary of Labor suggests that we may have been treating the symptom rather than the problem.

Indian communities have vast natural resources of land, of water, minerals, oil, gas, coal, and uranium which the Interior Secretary must protect as part of his or her trust responsibility. However, little or no attention is given to the more important resource of the unemployed, the uneducated, the poorly trained, and unemployable labor on Indian reservations.

I believe that we should ask how the combined asset base, if you will, of labor, of education, of the infrastructure and natural resources can be managed to make these communities a productive part of our society.

You know, the Nation is beginning to see a period of labor shortages and a vastly changing picture of the demographics of our country. In fact, with a slower rate of growth of the labor force and fewer young people coming into the labor force, we see an aging workforce. We see and know that 80 percent of new entrants to the workforce by the year 2000, in just 10 years, will be women, minorities, Native Americans, immigrants. How to educate and train those who will be, therefore, in demand like never before it seems to me needs immediate attention.

As we move to the 21st century, in fact, we know that we can be proud to say that as a nation we can offer a job to everyone who wants one if they are prepared.

It seems to me that in the year 2000 coming upon us the challenge of educating and preparing our workers for the jobs of the future is as important on Indian reservations as it is in our non-Indian labor markets. I encourage this committee to consider adapting the existing knowledge of labor-market management in order to meet the Nation's Indian management goals. I believe this committee must have more than a natural resource agenda.

I thank you for the opportunity to share some of these thoughts beyond perhaps the immediate issue of our water policy group in Indian water rights, and I'll be pleased, of course, to respond to your questions and might suggest first that Mike Clinton take a crack at some of this as well.

Thank you.

[Prepared statement of Ms. McLaughlin appears in appendix.]

Mr. BALLEN. Fine.

STATEMENT OF MICHAEL CLINTON, FORMER SPECIAL ASSISTANT TO UNDER SECRETARY McLAUGHLIN

Mr. CLINTON. Thank you very much, Secretary McLaughlin.

Mr. BALLEN. Mr. Clinton, I believe you have a prepared statement. Do you wish to summarize it or read it into the record?

Mr. CLINTON. I will summarize it.

Mr. BALLEN. Thank you very much, sir. Please proceed.

Mr. CLINTON. Thank you.

My name is Michael Clinton. I am vice president and Washington office manager for Bookman-Edmonston Engineering, Incorporated, a firm that specializes in water resources management.

I am a registered professional engineer with more than 25 years of experience in water supply, water quality and water rights management in the western States. I served as special assistant to the Under Secretary for approximately 2 years prior to joining the private sector in 1987.

My testimony today describes the philosophy, the techniques, and the goals we used in developing negotiated Indian water claims settlements during the time I worked with Under Secretary Ann McLaughlin.

Basic to the approach we used was the Under Secretary's philosophy that Indian water claims disputes are disputes among neighbors brought on largely by historical actions of the United States. The 50 or so outstanding disputes include many examples of western river basins where water was implicitly reserved for Indian purposes and was then allocated to non-Indians.

Neighbors have been set against neighbor, competing for an oversubscribed water resource. All three settlements approved by the 100th Congress have elements of this phenomenon.

Ms. McLaughlin sent departmental negotiators to the bargaining table as facilitators in these disputes. We went with a strong mandate to build a local Indian/non-Indian coalition that could sustain the settlement through the process of negotiations, legislation, and implementation.

I'll give you some personal examples of how this facilitator role worked for the Salt River Pima-Maricopa, and Colorado Ute settlements.

After commuting to Phoenix for 6 months of hostile meetings and shuttle diplomacy, it was very rewarding to see Indian and non-Indian water users working together to craft what ultimately became the settlement that was passed last year.

A similar process took place in southwest Colorado. The States and the members of the congressional delegation provided valuable assistance by encouraging the Indians and non-Indians to find ways in which they could co-exist.

As the coalitions strengthened, the Federal role changed from facilitator to participant. Probably my toughest assignments were to tell the Salt River and Colorado Ute groups that they were far from an acceptable cost-share package and then to see their unity, which I had helped create, expel me as the Federal representative. They jointly went their own way, taking control of the settlement, which the theorists tell me is a sign that the facilitator did a good job.

Those confrontations were around cost sharing, and cost sharing was a most difficult aspect. The Department's perspective on cost sharing was that there was a Federal obligation at least as large as what the United States would spend without a settlement.

Further, the Department believed that additional investments were needed on Indian reservations to turn paper water rights, that would be received through court action, into wet water which could provide the livelihoods and the economic opportunities for Indian peoples. We encountered significant opposition within the administration to this philosophy.

To address this concern, Ms. McLaughlin opened a dialog on coordination and funding procedures. That dialog was with staff and policy level personnel from Interior, the Office of Management and Budget, and the Department of Justice.

To that end, a letter was sent on November 10, 1986 from Interior to OMB Director Miller describing the coordination and funding strategies that Interior would use for water claims negotiations.

During 1986 and continuing beyond, there were many meetings with OMB and Justice on this subject. No cloture was ever achieved on the subject of the administration's cost sharing policy.

Interior continued to insist on a case-by-case cost share approach. OMB continued to insist that the United States should invest no more than its fiscal liability. It is my understanding that those discussions continued through the end of the Reagan administration without cloture.

During 1986 we had as many as 10 negotiating teams operating out of the Department. These teams were comprised of career staff from the agencies where programs would be affected by settlement.

One problem with the facilitator role for departmental negotiators was that very talented attorneys, engineers, and economists had little understanding of negotiating techniques, group dynamics, or group process. To build a cadre of Interior staff for negotiating teams, we retained a contractor to provide the necessary training. Interior professionals through that training saw that, like other professionals, sociologists have a cookbook showing how to facilitate resolution of conflicts.

The training, in my estimation, was a success. The techniques continue to be used by those Interior staff that are involved in negotiation.

The management control on the negotiating team was handled in the same manner as other water policy working group activities. My role was to oversee the working of the negotiating teams and to bring to the working group issues needing policy considerations.

Written and/or oral reports were made at working group meetings. Negotiating team leaders brought forward the cross-cutting issues for policy consideration and guidance. In this way, each assistant secretary had the opportunity to represent the interests of the various agency constituencies. Decisions reflected that kind of input.

One particular decision of this nature sticks in my memory. The Department was under court order to come up with an operating criteria for a reclamation project in the West. The decision would affect Indian rights, endangered species, and water for farming.

For months the issue had been hotly contested among the Solicitor, the Fish and Wildlife Service, Reclamation, and Indian Affairs. On a Friday evening at 5 p.m. the Under Secretary invited the players, both policy and staff, into her conference room for a dreaded final decision meeting.

Popcorn was served. The group was told that they would stay until a decision was reached. The Department's objectives were described by the Under Secretary and, much to everyone's surprise, the group found consensus in a little less than 1 hour. The stipulations were filed the next week meeting the court deadlines as requested.

Now behind the scenes something else took place. During the previous months of argument the solution had been defined by listening to all sides in the water policy working group meetings. By hearing the common threads of respective arguments, the Department's objectives were clarified. The issues needing decision became very narrow. What some called serendipity, which got them home in time for dinner on a Friday night, was in reality expertly managed process.

My experience at Interior suggests to me that the tremendous body of talent within the Department is an asset that can be used to resolve many of the Indian water claims disputes in the western States. But for that staff talent to be effective, the management of the Department needs to have a process whereby cross-cutting technical and policy issues can be surfaced and resolved quickly.

My experience with the water policy working group suggests that that model worked quite effectively, partly because of the process, but also because of the group management skills of the Under Secretary. I was pleased to be a part of that activity.

I thank you for the opportunity to provide my insights to the committee, and I also would be pleased to respond to questions as you may desire.

[Prepared statement of Mr. Clinton appears in appendix.]

Mr. Rowe. Thank you.

I'm going to be asking general questions. You were an adept team at Interior. I'm sure you're going to be an adept team in fielding the questions between the two of you.

Was one of the policies of the water policy working group—and I'll just describe it as a working group for future questions—to promote economic development on Indian reservations?

Ms. McLaughlin. I'll reply first. When I first set up the water policy working group, I can't say that economic development was primary, no. We first wanted to get everyone around the table to see where the intersection of the water issues would be with each bureau.

But as a secondary objective, you would say yes, because, as we discussed, water rights issues, economic development, and that which would further the Indians, economic development was clearly a goal. It would not be in the interest of the working group or our trust responsibilities, on the other hand, if we had negotiated settlements that pointed the Indians in a direction that would not be productive years out.

Mr. Rowe. But there was a decision made early on—I think there were, if I did my math correctly, there were six different areas. One of those areas was Indian water claim rights.

Ms. McLaughlin. That's right.

Mr. Rowe. How did you arrive at those components in formulating the working group and the different components?

Ms. McLaughlin. A number of ways. One, I guess my nose, along with everyone else's, twitches when you know what a policy issue that needs discussion is, and that comes about because of congressional interest, hearings coming up such as groundwater. Also with groundwater kinds of issues, we knew that EPA was working on various strategies.

Indian water rights, on the other hand, had been in an ad hoc way done out of the Under Secretary's office with the person at the time handling them seeking the counsel of various bureaus sort of one on one. Again, that lent itself clearly to the water policy group.

My activities and Mike's with the Western Governors Association activities on water issues led the policy group to get involved with water transfers and other related issues.

Some were driven by bureaus. We would discuss what issues need to be before the group as a whole. The way the water policy group worked, there was an executive director as well as subgroups that would be working on issues that may not clearly be defined until they came to the full sort of principals only group.

Mr. Rowe. Madam Secretary, why did you decide that water rights was an issue that you wanted to devote a lot of your time as Under Secretary to? I'm sure there were other issues that were coming across your desk.

Ms. McLaughlin. One, I guess would be because it was at the center of so many other activities involving not only other bureaus such as the Bureau of Rec particularly or Fish and Wildlife Service who would bump up against a water rights situation, but also a centerpiece with BIA. We saw this as an area where parties were ready for some kind of, shall I say, consensus building—to determine a better, again, economic development and a better future in keeping with what our goals were.

There also was, as I mentioned a minute ago, someone in the Under Secretary's office who in an ad hoc role had spent time on some of these. It seemed wise to institutionalize it.

A lot of momentum also came from Judge Richardson who was the first Solicitor with whom I worked as Under Secretary. It came about because there was I guess an ongoing discussion of where that kind of activity did belong. That is water rights discussion as well as water policy group as a whole.

I think with Judge Richardson and others, they kept coming back that it should be in the Under Secretary's office; that the Solicitor alone couldn't manage this; that BIA alone couldn't manage it.

So it was really those kinds of reasons that led me to see that this was something that had to be done.

Also one last point: I think that you had to have the clout, if it may be called that, at my level to work with OMB and Justice, clearly players in this as well.

Mr. ROWE. You both mentioned in your statements you wanted individuals who comprised the working group to be advocates for their respective positions. Why did you want them to be advocates, so that they could represent their interests individually and then try to reach a consensus?

Ms. McLAUGHLIN. Yes, in a way you hardly had to encourage some of them to be advocates; okay? But the reason I encouraged it rather than just accept the fact that it was there is that to my knowledge they had not tried at the Department of the Interior this sort of, if I may, use of group dynamic task force approach to cross-cutting issues in any kind of regularized way.

If you were invited to a meeting and you got to a meeting, you might be a participant, but a meeting could go on and you didn't know about it. So this was very much an organized way to approach how we managed, not how we solved the problem but how we managed issues.

The encouragement of each of them to be careful to be an advocate because we weren't expecting them to submerge that and be a participant as a senior manager, if you see the difference, but to be themselves, to take on that responsibility as opposed to participate as a senior manager at the Department, I think was important.

Second, it should be a no-holds-barred discussion so that consensus could clearly come, and that seemed to work.

What happened actually, interestingly enough—and it happens when you get a group like this, I think, working together—after the initial pouring out of opinion and their advocacy role, the quieting down would permit them to hear things they may not have heard before from one another. I think that's the dynamic that took place one of the nights that Mike mentioned.

Mr. ROWE. Was the Solicitor himself actively involved in these meetings?

Ms. McLAUGHLIN. Mike could help. Most of the meetings we required that principals attend. That would be the assistant secretaries, solicitor, et cetera. I chaired them.

We had a prepared agenda. Frequently at meetings staff would sit, if you will on the back bench, because the working groups that I indicated we had would have a lot of staff activity. So that report could take place.

I recall the Solicitor attending most often, but it would not be unlikely to have someone represent a principal, but I believe the Solicitor was there most often.

Mr. CLINTON. He did send Tim Vollmann and others to represent him when he was unavailable.

Mr. ROWE. What was the—how long did these meetings go on for? I know you were in the Department for a number of years. Was this throughout the time period?

Ms. MCLAUGHLIN. Well, it started when Judge Richardson was still there, so I would say it started in late 1984—would that be right? Yes, late 1984 when, I believe, we started to work on the State of the Union address for 1985. As a matter of fact, we come up with an overall water strategy statement—emphasis on strategy, not national policy—strategy statement for the administration. I believe it took off after the 1st of the year, well into January-February they started.

They lasted until I left and met—that's, I'm sure, available to you—quite regularly, monthly, and lasted usually one-half day, 2 to 3 hours.

Mr. ROWE. Did you see the working group as fulfilling one of the aims of President Reagan's policy on American Indians which was to promote negotiation over litigation?

Ms. MCLAUGHLIN. Very much so. That's what helped drive us. Both the President's policy as enunciated in general overall when he came in and then specifically in the Laxalt letter, as it's been called, the 1984 letter that clarified not only cost sharing, but specifically mentioned negotiations.

I thought it fit very much into what we were trying to do.

Mr. ROWE. You referred to the Departments of Justice and OMB. So your work went outside of the Department. Can you describe that process? Why was the Justice Department involved? Why was the Office of Management and Budget involved?

Ms. MCLAUGHLIN. The Justice Department because many of the Indian water rights cases were under some period of litigation and OMB because they cost money.

Whether we were doing this in an ad hoc way, as had previously been done, or in the water policy group, continuing coordination with both those agencies took place. We sort of brought that to the 10th power, if you will, when we wanted to have a better understanding overall of how we would manage the water rights program. Even though we were doing it case by case, we needed to have an overall understanding and work with both those agencies. Just before I left, we worked at developing the kind of principles that should guide us on Indian water rights settlements, which was around the time that, as Mike referenced, we were also training our people in the art of negotiations.

We were trying to give some, again, institutionalized form and substance that would fulfill the President's goals and objectives.

Mr. ROWE. Did you have discussions with Executive branch staff at the White House about this working group, so that you could try to have the involvement of the departments outside of Interior in your deliberations?

Ms. MCLAUGHLIN. An interesting thing happened. Obviously, because of our work and as it succeeded, I might add, in the water policy group, I know specifically our Department of Justice attorney for land and resources, or whatever it was called, Hank Habicht, on the one hand, and EPA on the other because of groundwater strategy, knew of our work formally and informally. They indicated that it would be a good idea, and had heard that I was interested in having this be more administration-wide. I had discussions at the time with Al Kingon who was the Cabinet Secretary and with others in Mr. Reagan's office, the Chief of Staff, evidencing support that this might be a good way to go as a group in the domestic policy process, but that it be a freestanding effort to coordinate water strategies across department lines.

The same interest came, by the way, from the Corps of Engineers on different issues. Rather than as an arm of the Cabinet Council on Natural Resources, this was big enough and ongoing enough, and we took steps to put that in place. However, it didn't take off before I left.

Mr. ROWE. When did you submit guidelines to the Office of Management and Budget, if you recall?

Ms. MCLAUGHLIN. I believe while we talked at the staff level through much of the late half of 1986, the November letter that was referenced to Jim Miller put in writing what we were thinking about in the way of guidelines.

Mr. ROWE. Do you know what's happened to—you left in——

Ms. MCLAUGHLIN. February 1987.

Mr. ROWE. Mr. Clinton, when did you leave?

Mr. CLINTON. I left in June 1987.

Mr. ROWE. Do you know what's happened, if anything, to the guidelines that you both submitted around the middle of 1986?

Ms. MCLAUGHLIN. Nothing before I left. I'll defer to Mike.

Mr. CLINTON. When the guidelines were sent over to OMB, we received back from OMB staff some communications that they were quite disappointed in those proposed guidelines. Their primary concern was that we, in following the philosophy of the Laxalt letter, had suggested that negotiations on Indian settlements and on water projects at large, should be on a case-by-case basis, that they should reflect such things as Federal commitments to States, the trust responsibility to Indian tribes, other Federal objectives—endangered species, national defense needs, things of that nature.

The Office of Management and Budget did not concur in the desire of Interior to leave these negotiations on a case-by-case basis. They strongly proposed that a formula be developed to cover those potential expenditures in a water settlement negotiating program.

That dialog, I'm informed, continued through the end of the Reagan administration, much along those same lines, that the Interior Department felt committed to retain case-by-case discretion in negotiations whereas OMB preferred to see a finite formula established and agreed to prior to any negotiations being started.

Mr. ROWE. So they wanted to have an idea of the price tag before the negotiations actually started?

Mr. CLINTON. That's correct, and they felt that that price tag should be no larger than the fiscal exposure of the United States without a settlement.

Mr. ROWE. Were there—you mention in your statement that there were three settlements that were affected through the work that this group did, most recently in the 100th Congress. Could you two briefly describe those settlements?

Mr. CLINTON. Let me walk through them very quickly. The first one that passed the Congress was the Salt River Pima-Maricopa settlement which provided water supply to serve about two-thirds of the practicably irrigatable lands on the Salt River Indian Reservation.

There was funding provided in that settlement so that the tribe could use the bulk of that water. The settlement finally was closed somewhat over the objection of the administration. The Congress enacted it at a $57 million expenditure level from the United States. Up until the 11th hour, the administration, through the Office of Management and Budget, felt that the expenditures should not be more than about $30 million, which was the litigation exposure estimates that the Justice Department and the Office of Management and Budget had come up with.

The second settlement that passed the Colorado Ute settlement that involved construction of the Animas-La Plata project and trust funds for the southern Ute and Ute Mountain Indian Reservations. For that settlement, much of the controversy was not over the Indian settlement, but over the Animas-La Plata project and, second, over the off-reservation water leasing issues that became very contentious in the last Congress.

There was a final agreement on off-reservation leasing included in the Animas-La Plata/Colorado Ute settlement that allows the tribes to lease water off reservation as long as they do it consistent with State water law.

The last settlement that was passed was the San Luis Rey settlement. It provides 18,000 acre feet of water for five mission Indian bands in northern San Diego County. It also provided a $30 million trust fund for that settlement.

The settlement is a result of a lot of changes that came about in the Congress. As originally introduced, it would have been self-financing through the use of subsidized Federal water and power. That use and leasing of Federal water and power to finance the settlement was removed in the congressional deliberations and replaced with a $30 million trust fund. So those are the three settlements that were passed last year.

Mr. ROWE. The funding for these three settlements, were those specially appropriated outside of the BIA budget?

Mr. CLINTON. There has been no funding for the settlements. They were passed at the end of the 100th Congress. This Congress will consider how to fund them and, to my knowledge, neither the Budget Committees nor the Appropriation Committees have made any decisions.

The Reagan administration budget includes a request of $5 million each to fund the trust funds for the three settlements. There is a request for $15 million in the President's budget that's in front of the Congress now.

Mr. ROWE. Well, if you could make your recommendations known to the decisionmakers in Congress, would the two of you suggest that the money should be appropriated outside of the BIA budget or not?

Mr. CLINTON. I'll give it a shot and my good friend, Ms. McLaughlin, can correct me.

The BIA budget is not equipped or set up for these kinds of settlements. Therefore, it's my sense that some additional budget allocation from the Budget Committee needs to be established for this kind of a purpose.

We worked with an advocacy group out of the western States including western governors, business interests, and travel interests. They estimate that these settlements may require a budget allocation over the next 20 to 30 years of somewhere between $2 and $3 billion.

Carving these funds out of the Bureau of Indian Affairs budget would set tribes against other tribes because you would be taking resources for one tribe at the expense of all other tribes through the settlement process.

If these cases went to litigation, the funds would come out of the Justice Department settlement fund which is off-budget. That——

Mr. ROWE. What do you mean by "off-budget"?

Mr. CLINTON. When judgments against the United States are rendered by the courts, the Congress appropriates a block of money to the Justice Department to pay those settlements, and it's out of control. Neither the appropriations committees nor the authorizing committees have any control of what the courts award as judgments against the United States.

Therefore, if these claims went to judgment and the judgments were awarded against the United States, the money would come outside of the normal control of the appropriation and authorizing committees of the Congress.

Ms. MCLAUGHLIN. I'll add to that, if I might, just briefly. One, I think it distinguishes between our trust responsibility which is somewhat unique and our ongoing programmatic responsibility by keeping them separate, but also I think that I would submit that this committee and others responsible should not conclude that putting a basket of money outside of BIA for settlement would suggest that all of BIA's monies are responsibly administered and that also should be looked at.

It may not be as awesome if we manage those funds better. Frankly, it may not be as awesome when we look at this secondary amount of money outside.

Mr. ROWE. Would you agree, though, Madame Secretary, that in an instance where there is not funding, either specially authorized by Congress or in this judgment pool, that if it has to come out of the BIA budget, and that has occurred in the past, that there is a conflict where you're trying to help one tribe that has legitimate water claims versus Mr. Swimmer or Mr. Ragsdale having to make a recommendation to the Secretary about this is where we take the millions out of our budget this year that has a profound effect on all other tribes.

Ms. MCLAUGHLIN. Absolutely. I say I am agreeing, but I wouldn't want—if I might say, if there was any difficulty that is behind us and ahead of us with regard to funding of BIA generally, it's that the money seems to be forthcoming frequently for the BIA budget from our good friends on the Hill, but not necessarily as much activity in how we manage that money.

To get the responsibility that we have as trustees for the Indians mixed up in that I don't think is a good idea, and I would agree that it should be separate.

Mr. Rowe. Mr. Clinton, this may be my characterization of some of your testimony, but in dealing with OMB, while there is at present—at least under the Reagan administration, presumably under this administration, too—a preference for negotiation settlement over litigation, when OMB is saying, "We need to know the price tag and, if we can't get that, we're not in favor of these negotiations," aren't they, in essence, favoring protracted litigation which could be more costly, though perhaps from their standpoint that's a delayed cost? It might get them beyond the annual hurdle of Gramm-Rudman-Hollings.

Mr. Clinton. I can't speculate as to OMB's objectives and motivations, but I know at different meetings I have been in that OMB staff did indicate a desire to stay with the historical litigation process as opposed to the negotiating process, primarily because of the budget impacts of those negotiated settlements.

Mr. Rowe. You stayed a few months longer than Secretary McLaughlin. When you left in late 1987 had this working group been disbanded?

Mr. Clinton. Yes; it was.

Mr. Rowe. Do you recall when that was done?

Mr. Clinton. I don't think it ever was formally done. As Ms. McLaughlin was leaving the Department, there was circulating a departmental manual order that would have institutionalized and made permanent this working group. That order was never approved by the Secretary, and no additional meetings of the water policy working group were ever called after Ms. McLaughlin left.

There was not a formal dissolution. It just was allowed to atrophy.

Mr. Rowe. Did you have discussions with anyone at Interior about the reasons, other than Secretary McLaughlin's leaving, the reasons for not following up on this coordinating of water policy? It wasn't just an Indian water rights policy; it was a policy, as you have both stated in your statements, to try to resolve what you described as cross-cutting conflicts at the Department of the Interior.

Mr. Clinton. I had no discussions on the broader issues. After Ms. McLaughlin left, I continued to be charged with managing the Indian negotiating programs. I was directed by the chief operating officer at that point in time to work with the various assistant secretaries and to identify lead assistant secretaries for each of the settlements that were then under negotiation and to pass the leadership baton to those assistant secretaries, which I did.

Mr. Rowe. Well, were you ever told by others that your work was too pro-Indian?

Mr. Clinton. Not directly to my face, no, I was not told that I was too pro-Indian. We did work with this ad hoc group I mentioned earlier, the consortium of western business and governors and tribal groups, to identify a funding source for the settlement program.

That became a bone of contention that we should not be going that far out ahead of the Department to help draft legislation for this group, as they requested, to identify a funding source for settlements.

In that vein, I was asked to stop, cease and desist, that kind of support activity for the settlements, which I did.

Mr. ROWE. Let me just ask one or two policy questions because the senators would be doing that. Madame Secretary, you advocate coordinated policymaking not only presumably at Interior, but in your job as Labor Secretary, in your previous post at Treasury, and in the EPA.

This morning—and I'm not sure you heard; you weren't here this morning for the reading of the letter, and I'm not sure you've seen it, but this committee has sent a letter to President Bush requesting more coordinated policymaking as it pertains to American Indian issues.

Should this coordinated policy that you tried to have in water issues where you did want each of the components, including the Indian division, to be advocates—do you support more coordinated policymaking as it relates to American Indians?

Ms. MCLAUGHLIN. Yes; of course, I do in this vein, and I'm sorry Ross isn't here. He might have already mentioned some of this outside of water.

One of his goals, and certainly my interest, was that the BIA, the Assistant Secretary with the support of the Secretary or Under Secretary of the Interior, should not duplicate with those that are perhaps untrained or unable to execute certain professional activities for the Indians such as investment, I believe, was one that was hot when I was there, the investment of BIA trust funds in the hands of those who may not necessarily be as good as professionals in the investment community.

Small business entrepreneur kinds of advice and counsel might be better done by SBA than BIA setting up its own small business enterprise activity. So you could go around the Government—housing, et cetera, HUD instead of BIA—and say that BIA could clearly benefit by better coordination with others within the Government who had an expertise that they could bring to bear. I touched, for example, on workforce issues today rather than BIA duplicating it.

If I can jump ahead a little because I didn't hear the letter read this morning, but I was glancing at the briefing book just before we started, I might make a comment and hope that what I read was the case—that I think there's a tendency to think of coordination, as I understand the letter contained, that the White House should have a major domo on Indian affairs to coordinate the Government for Indians. If I'm right on that, I would be more cautious of that kind of coordination. As a Labor Secretary, I would say I would not want a labor domo at the White House; I am that. At Interior, the Secretary has trust responsibility and those are executed by the Assistant Secretary.

It depends on what you mean by coordination, but I clearly think that the Indian community in this country would be well served by better expertise and coordination where that expertise exists in specific areas, yes.

Mr. **Rowe**. In the letter there is a call for an individual at the White House whose primary responsibility is on American Indian issues. It wouldn't be an office of American Indians per se, but it would be a person who would be actively involved in policymaking, but not in a way to shortcut the Department of the Interior in any fashion.

Ms. **McLaughlin**. I think that what that kind of a situation comes down to for results that are positive is the individuals, quite frankly. My experience in now four departments, and particularly as the Secretary of Labor, is that if you don't have the leadership within the department, it's not going to matter how many people you have ultimately outside. It really will depend on the success of the leadership within.

What a White House liaison person can do, if the relationship is between that person and the Secretary in the case of Indian affairs, is he or she can be obviously at the table at White House meetings and all to outreach, to be a facilitator, but if they try to duplicate or make policy outside of the Secretary, I think that's a risk. It depends on that relationship, sure.

Mr. **Rowe**. We'll be in touch with both of you in the future to get any possible legislative or administrative steps that you two might recommend as we go to the drafting of policy proposals by the committee. We do thank you both for being here today. Thank you for your testimony.

Ms. **McLaughlin**. Thank you.

Mr. **Ballen**. Thank you very much. Secretary McLaughlin and Mr. Clinton both have distinguished histories.

Our transcripts are prepared on an overnight basis. We will get your transcripts to the Senators. I just would like to ask your permission, if the Senators have any written questions they wish to submit to you, would you consent to respond to those in due course?

Ms. **McLaughlin**. By all means, sure.

Mr. **Clinton**. Sure.

Mr. **Ballen**. Thank you very much for your testimony here today.

We'll take a 5-minute recess before we resume with Mr. Vollmann.

[Recess taken.]

Mr. **Ballen**. We'll come to order.

Good afternoon, Mr. Vollmann. Thanks for coming. You've had a very distinguished history in the Solicitor's office both as an Associate Solicitor and now as Regional Solicitor in Oklahoma and Deputy Associate Solicitor, and before that as a legal services attorney in the Navajo Nation. We thank you for being here.

Again, the Senators would request that if they could review your transcript, if they have any further written questions, they could submit those to you, if that's acceptable to you.

Mr. **Vollmann**. Certainly.

STATEMENT OF TIMOTHY VOLLMANN, REGIONAL SOLICITOR, SOUTHWEST REGION, DEPARTMENT OF THE INTERIOR

Mr. **Ballen**. Thank you very much Mr. Vollmann.

We'll begin the questioning with Mr. Mickum.

Mr. ROWE. Before Mr. Mickum, I just wanted to ask one or two questions. We've heard a lot about you, Mr. Vollmann, today before you actually testified.

Would you briefly give us your background at the Department of Interior from the beginning?

Mr. VOLLMANN. Well, I began with the Department in November of 1975, having moved there from Window Rock to Washington. I worked on the Maine Indian land claims when I first got there. That's when the Interior Department did pick up the ball, right after I got there, after five years of opposing——

Mr. ROWE. Was that coincidental with your arrival?

Mr. VOLLMANN. Yes; as a matter of fact, it was. I never did have the opportunity to meet Professor Cox when I was working on it, but that was certainly very interesting.

In 1978 I was special assistant to Solicitor Leo Krulitz, and the following year I was appointed Assistant Solicitor for Indian Land and Minerals.

In 1983 I became Deputy Associate Solicitor for Indian Affairs, which is normally the highest career position in the Division of Indian Affairs.

But the following year, Judge Frank Richardson, who was then the Solicitor, asked me to step up and become the Associate Solicitor. I held that position until 1987 when I went out to Tulsa after the decision in the *Austin Walker* case. I was detailed out there on a temporary basis to be Acting Regional Solicitor and I found the work challenging and asked for a permanent assignment and was permanently assigned there in August 1987.

Mr. ROWE. You referred to the *Austin Walker* case. Would you describe that? That's a case that not only is quite well known in the legal community, but also was highlighted by the Arizona Republic in a series of articles that predated the creation of our committee.

Mr. VOLLMANN. Yes; the case as originally formulated was a suit against the United States based on the alleged malpractice of an Interior Department trial attorney in the Tulsa Solicitor's office in connection with an oil and gas lease approval proceeding that was held in Creek County District Court in 1983. This is a unique procedure for Indians of the Five Civilized Tribes where their oil and gas leases are approved in State courts and Interior Department attorneys appear at those proceedings to protect their interests.

In March 1987 the U.S. District Court, after a trial, ruled that the United States was liable to Mr. Walker in the amount of $685,000.

I was sent out by Solicitor Tarr to Tulsa to review the procedures, to meet with BIA officials, judges, members of the bar, and especially the Indian people to find out what needed to be done in that area and to reform the procedure so that we would not have a repeat of that case.

Mr. ROWE. Has there been a repeat of that case?

Mr. VOLLMANN. No; there has not. I went out and I participated in a number of the proceedings and talked to a number of the judges and, again, met with a large number of the people throughout eastern Oklahoma.

In November 1987 I wrote a letter to the 40 associate district judges who hear those cases recommending changes in the procedures. A number of the judges have indicated that they have adopted those. But, in any event, we have developed procedures internal to the Solicitor's office and management controls that will insure that there won't be a repeat of that.

I also appointed—well, the first management decision I made when I got there was to appoint as chief trial attorney Ms. Sharon Blackwell, who is an experienced Indian attorney and who has done an outstanding job in that role.

Mr. ROWE. You have stayed on now as the Southwest Regional Counsel for the Department of the Interior?

Mr. VOLLMANN. Yes; I'm the Southwest Regional Solicitor.

Mr. ROWE. Well, I think Mr. Mickum is going to be questioning you mostly about your experience both as the Associate Solicitor for Indian Affairs and then more recently as Regional Solicitor. If there are instances when you answer a question that relate to your prior experience, if you would let us know that when you answer.

Mr. Mickum.

Mr. MICKUM. Thank you.

Good afternoon. Let me congratulate you. I think of all the witnesses we've had here today, you've been universally lionized by everybody.

In 1984 when then-Solicitor Richardson asked you to be associate solicitor, did you have an opportunity to speak with him and give him your philosophy and what you wanted to do with the job?

Mr. VOLLMANN. Oh, yes. I told him that as an Interior Department attorney and, for that matter, before I worked at the Department and I was practicing law on the Navajo Indian Reservation, that I had been an advocate for Indian causes, to their rights to their land and resources and rights to tribal self-government, and that I felt that that was the appropriate role for an associate solicitor for Indian Affairs and that, if he wanted me for that job, it had to be based on that understanding.

Also, I told him that what I thought was needed insofar as that role is concerned was for the associate solicitor to reach out to the Indian tribes and to their attorneys and make clear that there was an open door to that office and that they could discuss any legal issues regarding Indian rights that they felt needed to be addressed by the Department. He agreed that that would be an appropriate role for me to play.

He cautioned me and his major instruction to me was to explore alternative dispute resolution before recommending litigation; that it was his experience having been a judge for a quarter century and a member of the bar for much longer than that, that litigation wasn't a very effective way of solving disputes and that alternatives to litigation should be thoroughly explored before we recommended the filing of litigation.

Mr. MICKUM. So it's fair to say that Judge Richardson allowed you to run the Division of Indian Affairs in conformity with the philosophy that you had expressed to him?

Mr. VOLLMANN. Certainly.

Mr. MICKUM. Did he ever attempt to temper the advocacy within the Division of Indian Affairs or tone it down?

Mr. VOLLMANN. No.

Mr. MICKUM. Did you ever attempt to tone down the advocacy within your division?

Mr. VOLLMANN. No.

Mr. MICKUM. As a corollary to one of the questions I asked you earlier, was it your policy and the policy of the Division of Indian Affairs to test undecided cases where it was practical?

Mr. VOLLMANN. Certainly the answer is yes, but I want to go into a little detail on that question. If we assume that modern Federal Indian policy calls for the enhancement of the exercise of tribal governmental powers to throw off the cloak of Federal paternalism over Indian country, then it behooves us as legal counsel to provide legal services that would enhance those tribal powers and also to assert rights to their trust resources, certainly.

But it has to be understood that the assertion of those powers is not uncontroversial. We're talking about taxing and regulatory authority. Whenever any government takes those kinds of initiatives, it's necessarily controversial; it's a matter of public concern.

We wouldn't necessarily agree with the way a tribe was exercising its authority, but I believe we have to address the issue and get involved in the jurisprudence relating to the scope of that authority and to protect and enhance it.

Mr. MICKUM. But as a general policy, it's fair to say that it was the policy of the Division of Indian Affairs to advance reasonable Indian claims?

Mr. VOLLMANN. Oh, yes.

Mr. MICKUM. OK. During your tenure as associate solicitor, did you allow the attorneys within your division to make direct contact with the Bureau of Indian Affairs?

Mr. VOLLMANN. I encouraged it.

Mr. MICKUM. What are the advantages of such practice?

Mr. VOLLMANN. Well, one product of the outreach to tribal attorneys and tribal leaders is that we could identify legal problems before they became serious and we could approach Bureau officials and certainly the Assistant Secretary for Indian Affairs, advise them of it, and explore options for them to deal with it so that we could eliminate litigation risks.

I encouraged my attorneys to participate in BIA staff meetings here in Washington and to keep in regular touch with the BIA staff and the Assistant Secretary staff, so that our legal counsel would be enhanced.

I viewed us as being accountable in the same way corporate counsel would be accountable in reviewing decisions and making sure that major policy decisions and programmatic decisions were made in a way that litigation risk was eliminated.

Mr. MICKUM. Why do you feel that it was appropriate for your division to work closely with the tribal attorneys? You indicated earlier that that was the policy of yours.

Mr. VOLLMANN. Well——

Mr. MICKUM. What are the advantages of working hand in hand with tribal attorneys in advancing an Indian claim?

Mr. VOLLMANN. Tribal attorneys have access to the evidence, the data. They advise the tribes on the exercise of their governmental authority. They might draft the ordinances that effectuate the exercise of governmental power or authorize it. That kind of coordination is really important if we are later going to be in litigation over the exercise of that power or if we are to take steps that would avoid litigation.

Mr. MICKUM. You never undertook any actions that would have closed off access to the tribal attorneys?

Mr. VOLLMANN. Certainly not.

Mr. MICKUM. OK. The committee recognizes that the Solicitor himself necessarily has to balance competing interests, but as associate solicitor, did you see it was your job to involve yourself in the balancing of interests?

Mr. VOLLMANN. No; not in the balancing of interests. I don't think that's an appropriate way of putting it.

What you discover in the bureaucracy when conflicting interests come up is they are presented to you through the parochial channels, and oftentimes you find that what are ostensibly conflicts in policy or program can be reconciled if you remove the parochial trappings and the predispositions of the bureaucrats who formulate the policies.

My first attempt would be to reconcile the policies so that we didn't find ourselves in that kind of a dilemma. If the policies couldn't be reconciled, if they were in direct conflict, I didn't feel it was my job to balance them; I felt it was my job to advocate the Indian position.

Mr. MICKUM. OK. In your statement—and I want to try to give you an opportunity to read that or summarize that at the conclusion of the questioning. I understand you have a plane to catch and we'll have to see how much time we have.

In your statement you say that the attorneys for the Solicitor's office need to be imbued with the proper appreciation of the trust responsibility. What do you mean by that?

Mr. VOLLMANN. I mean that they need to understand the history of Indian jurisprudence, the treaties, and the history of American Indians in the history of this Nation. That is very important.

American Indian jurisprudence is a fascinating jurisprudence. I've been privileged to participate in it throughout my career.

I don't think you can effectively practice law in this area until—unless you are sensitized by an understanding of the decisions, for example, of Chief Justice John Marshall in the 1830s, recognizing tribal sovereignty.

I only have to read newspaper editorials from Tulsa to see that many people don't understand that part of the history: that it was something that was made up by modern Federal judges sort of as they went, and that it doesn't have a long, long history in our jurisprudence and Supreme Court precedent.

Mr. MICKUM. Do you feel that the Associate Solicitor at a minimum ought to have some background, familiarity, with Indian law?

Mr. VOLLMANN. Yes; I believe that's highly preferable. I guess I'd like to give you an anecdote that perhaps would demonstrate that in a strange sort of way.

One Associate Solicitor I worked for at the beginning of the Reagan administration was a man by the name of Larry Jensen. I've not worked with many lawyers finer than Larry Jensen.

Larry came into the Solicitor's office with no background in Indian law. Basically, what he learned very quickly was that he had to rely on the career attorneys in the division to be able to be an effective advisor to the Assistant Secretary on Indian Affairs and to the Solicitor himself. It became something of a joke in the division that Larry and his successor, Paul Baird, another fine lawyer who had had no background in Indian law, had been captured by the career attorneys in the division because they regularly signed off on the recommendations of the career attorneys.

It seems to me that it is preferable for the Associate Solicitor to be someone with a background in Indian law, and there are certainly many qualified lawyers in the country today with that kind of background.

But if he is not, he needs to rely on and trust the attorneys on his staff.

Mr. MICKUM. I think the answer to the next question is implicit in your testimony, but I want the record to be clear. Do you believe that the Associate Solicitor should be an Indian advocate?

Mr. VOLLMANN. Oh, yes.

Mr. MICKUM. OK. You were present during Ross Swimmer's testimony?

Mr. VOLLMANN. Yes; I was.

Mr. MICKUM. Are you familiar generally with the facts of the *Sandia* case?

Mr. VOLLMANN. Somewhat.

Mr. MICKUM. How would you characterize the importance of Solicitor's opinions?

Mr. VOLLMANN. Similar to what Ross said. They are administrative precedent within the Department of the Interior. They are binding within the Department, which is not to say that they aren't overruled when a subsequent Solicitor doesn't like what his predecessor said, so they are vulnerable in that sense. But until they are overruled, they are considered to be binding.

They are published, so they have may have precedent under the Administrative Procedure Act.

Mr. MICKUM. Have you been involved in drafting Solicitor opinions?

Mr. VOLLMANN. Yes.

Mr. MICKUM. When you were involved in the drafting, was it your policy and the policy of those with whom you worked to involve people with particular expertise with regard to the matter under consideration?

Mr. VOLLMANN. Certainly.

Mr. MICKUM. Have you read the *Sandia* opinion?

Mr. VOLLMANN. Yes.

Mr. MICKUM. Were you involved in the formulation of the final opinion?

Mr. VOLLMANN. No; I was not.

Mr. MICKUM. You've heard Mr. Swimmer's testimony that he spoke to you. Do you recall when it was that he contacted you?

Mr. VOLLMANN. Yes; it was in December, late one Friday afternoon.

Mr. MICKUM. Why did Mr. Swimmer contact you?

Mr. VOLLMANN. Well, he told me that he was about to receive Express Mail—Ross was in Tulsa at the time; he was home for the weekend, and he would be getting a copy of the final draft that he understood would soon be released and that he was concerned about some aspects of it.

Mr. MICKUM. Did he ask you whether you had been involved in the formulation of the final opinion?

Mr. VOLLMANN. Yes.

Mr. MICKUM. Did he ask you or did he discuss his concerns about the opinion with you?

Mr. VOLLMANN. Yes; we got together that weekend.

Mr. MICKUM. Did you expect that you would be involved in the formulation of the final opinion?

Mr. VOLLMANN. Yes; I suppose it would be fair to say that I expected to. Solicitor Tarr and his predecessors routinely got me involved in matters involving boundary disputes because I do have some experience in that area, even before I was Associate Solicitor.

Mr. MICKUM. Did you ever have occasion to discuss the matter with Solicitor Tarr?

Mr. VOLLMANN. Yes; he called me several days later.

Mr. MICKUM. Do you remember approximately when that was?

Mr. VOLLMANN. I think it was December 13 or 14.

Mr. MICKUM. OK. Mr. Swimmer's statement criticizes the opinion for cutting off the Secretary's authority to correct erroneous patents or boundary disputes. Do you have a similar problem with the opinion?

Mr. VOLLMANN. I can tell you that, based on my conversation with the Solicitor, that with respect to that portion of the opinion, he holds a strong view that when Congress enacted the Indian Claims Commission Act that it reserved, Congress reserved to itself the matter of the resolution of any takings of Indian land that occurred prior to 1946 unless they were the subject of claims for monetary damages in the Indian Claims Commission, and that in doing so, Congress took away any authority the Secretary might have to deal with any of those pre-1946 takings by correcting boundaries or reforming patents.

He just does not believe that the Secretary has that authority and that Congress has reserved that to itself and that it's a congressional prerogative.

Mr. MICKUM. Do you think that's a good idea?

Mr. VOLLMANN. I can tell you that prior to this opinion that authority had been exercised in a number of cases and that it was viewed as an opportunity for the Secretary to fix boundaries and reform patents to fix problems that were discovered in connection with public and Indian lands without, of course, harming the intervening rights of third party holders of Federal patents, for example.

That authority was often useful in preventing civil disobedience and in getting peaceful resolution of land disputes.

I guess I am concerned that since the courts do not have jurisdiction over such matters because of statutes of limitation, that unless Congress under the ruling of this opinion takes the responsibility seriously to deal with these disputes—I can tell you that there are others—that Indian people will find that they have only one remedy, which they have done before, and that is exercise self-help and take over lands, which was done in Nevada by the Western Shoshones, and force a resolution of their Indian claim by being prosecuted for trespassing and utilizing the basis for their claim to the land as a defense. I don't think that's a satisfactory way of resolving these matters.

Mr. MICKUM. In your experience, how frequently have Solicitor's opinions taken away the powers of the Secretary?

Mr. VOLLMANN. I should think that's pretty rare. I cannot think of one other than this one.

Mr. MICKUM. Are you aware of any instances where the Solicitor has advocated taking away secretarial power?

Mr. VOLLMANN. Well, we have about 100 years' worth of Solicitor's opinions, so I wouldn't claim to know that there were none; I suspect there are some. I just don't know of any.

Mr. MICKUM. In your experience with the Solicitor's office, have such boundary disputes been handled differently? I think you alluded to that fact.

Mr. VOLLMANN. Yes; I can give you a number of examples. In 1977 the Taos Pueblo came in. They had a dispute with the Forest Service to an area called Tract C. This is different from the Blue Lake situation that I believe Leonard Garment spoke about in his testimony last month.

They met with the policymakers at Interior, representatives of Taos Pueblo. Basically, they were given a choice that if they wanted to get legislation to resolve the matter in their favor, the Department would support it, but if they wanted the Secretary to resurvey the boundary, which again it was understood that the Secretary had that authority at that time, that there was the risk, the very likely happenstance that the Forest Service would oppose and would seek a review of that decision by the Attorney General. At that point Interior would lose control, and there was a risk that Pueblo would end up with nothing.

What happened was that the Secretary—they asked for the latter. The Secretary did resurvey the boundary and did determine that the Pueblo was correct and the Forest Service was incorrect in mapping this, what was a very remote wilderness area. The Forest Service went to the Attorney General, and the Office of Legal Counsel at the Department of Justice who ruled in favor of the Forest Service. But, as it turned out, the Pueblo sued and won in Federal court.

In 1982 Cochiti Pueblo came in claiming lands which had been erroneously left out of their Spanish land grant as a result of a Spanish court decree in the early 19th century. This case was much weaker legally than the Sandia claim or any other that I had experienced because there was a res judicata problem; namely, that the matter of the title to this land had already been adjudicated in the 19th century, albeit in a Spanish court, but Spain had sovereignty over New Mexico at that time.

So I recommended to Assistant Secretary Smith that the only way that we could deal with this would be through legislation. He supported the legislation; the Forest Service, of course, opposed it. As to the Office of Management and Budget—and I remember the night before a congressional hearing on the bill arguing with general counsel at OMB about the merits of the Pueblo claim along with Assistant Secretary Smith and leaving late that night from Interior rather discouraged that the administration position would oppose the Pueblo on the bill that was introduced.

But the next morning I discovered that—I was told by Assistant Secretary Smith that Secretary Watt had gone to the White House and had essentially in bureaucratic terms "rolled" the Forest Service and OMB, and the Department supported the legislation and the land was returned to the Cochiti Pueblo.

There are many other examples. In 1974 the Department supported legislation sponsored by Senator Goldwater to return land to the Havasupais in the Grand Canyon over the objection of the National Park Service.

In 1983 we recommended to the Department of Justice that suit be filed against third parties to claim 21,000 acres of land claimed by Santa Domingo Pueblo on the basis of an incorrect Federal survey.

We've taken advocacy positions in many instances through the years.

Mr. ROWE. I just have one question. When you took that job as Regional Solicitor, did you not anticipate that you were going to be involved in the decisionmaking on issues that were within your region?

Mr. VOLLMANN. Yes.

Mr. ROWE. And Sandia Pueblo is located where?

Mr. VOLLMANN. Well, it's in New Mexico which is within my region. On the other hand, the Pueblo had begun their quest in Washington, and I had been involved before I left there in preparing a draft opinion, or my staff prepared a draft opinion which was sent to the Forest Service for their review right about the same time that I went to Tulsa.

Mr. MICKUM. I asked Mr. Swimmer whether he felt the Sandia case could have been disposed of on its merits. Do you believe that it was necessary to reach the issue of the secretarial's power in order to come to a contrary decision?

Mr. VOLLMANN. I think not.

Mr. MICKUM. I don't have any other questions.

Mr. ROWE. I just have two questions.

Does this opinion have the potential to be used in other matters in the future?

Mr. VOLLMANN. Well, it's binding on the Department certainly. I mean, it is the law of the agency.

Mr. ROWE. But is it on issues that do come up from time to time in matters of a legal nature, a policymaking nature?

Mr. VOLLMANN. It's not an everyday occurrence, but I know of several other tribes who have similar problems with incorrect surveys and boundary disputes which have not yet been resolved.

Mr. ROWE. I believe Mr. Swimmer said that he knew of instances where the rationale of the opinion contradicted other stances by the Department of the Interior itself in ongoing matters.

Mr. VOLLMANN. Well, we had—the Secretary had exercised that authority on a number of situations prior to my coming to the Department. Some of those are in litigation right now.

Mr. ROWE. I want to ask you one more question about Indian allottee issues. Has that been an area where you've gotten very involved in since you've taken the job as the Regional Solicitor for the Southwest?

Mr. VOLLMANN. Absolutely. Of course, the *Austin Walker* case helped us to focus on the rights of the Indians, of the Five Civilized Tribes in eastern Oklahoma, and how their rights were being handled through the State courts.

We have taken an advocacy posture there and been very aggressive in our protection of their rights, I believe, there in the State courts.

In addition, we've gone to Federal court on their behalf on a number of occasions, including on behalf of Mr. Walker himself. He still had a claim to damages as against the oil company and private counsel who had been involved in that Creek County District Court proceeding in 1983—and after his suit against the United States was concluded he asked us, through his attorney, to intervene in that case and to "remove," in legal terms, the suit to Federal court and to take an active role in supporting his claim against the third parties. We did that. He got a favorable settlement out of it.

Mr. ROWE. With regard to allottee issues, does that complicate the work of the Bureau of Indian Affairs in ways that you had not anticipated until you got out to Tulsa?

Mr. VOLLMANN. I guess my sense is—and I lay this out in some detail in my statement—was that in some sense things hadn't changed from when I had been a legal services attorney out in Navajo country in the early seventies.

I mention in my statement that a number of the BIA officials then were non-Indian. There was a language barrier with the Navajo allottees. I discovered that my clients really didn't know anything about their rights. Some of them didn't even know where their allotments were and, thus, didn't graze their sheep on them or live on them or knew anything about what their rights were.

Today I find that institutionally the Bureau does not give high priority to that, for reasons I think that are easily explained by modern Federal Indian policy; namely tribal self-determination.

The major constituencies of the Bureau of Indian Affairs are the tribal governments. They get priority in funding. They get the attention of the BIA officials. It's the bureaucrats at the lowest tier which are responsible for allottee matters. It just is not given a great deal of attention, frankly, which is not to say that there aren't some really dedicated people in the BIA who are concerned about this, as I am, but I just think institutionally it's a low priority.

Mr. ROWE. Well, the committee will be looking at allottee issues in the future as it finishes its hearings and makes policy recommendations. I'm sure they're going to want to be talking to you at that point, given your experience there.

Do you have any objection to having your entire statement entered into the record of today's proceedings?

Mr. VOLLMANN. No; I don't, but I want to make clear that they represent my views and not necessarily the views of the Department of the Interior. It is my personal statement.

Mr. **Rowe**. And is that correct for the questions and answers that we've had this afternoon with you?

Mr. **Vollmann**. Oh, yes. Yes, those are my personal views, certainly.

[Prepared statement of Mr. Vollmann appears in appendix.]

Mr. **Ballen**. Thank you very much, Mr. Rowe and Mr. Mickum.

Thank you, Mr. Vollmann, for coming. As Mr. Rowe said, we will be in touch with you in the future. We appreciate your coming here today and for all the assistance that you've given the committee.

The committee will stand in recess until 2 p.m. Monday, February 27.

[Whereupon, at 5:01 p.m., the committee recessed, to reconvene on Monday, February 27, 1989, at 2 p.m.]

FEDERAL GOVERNMENT'S RELATIONSHIP WITH AMERICAN INDIANS

MONDAY, FEBRUARY 27, 1989

U.S. Senate,
Special Committee on Investigations,
Select Committee on Indian Affairs,
Washington, DC.

The committee met, pursuant to recess, at 2:16 p.m., in room 216, Hart Senate Office Building, Hon. Dennis DeConcini (chairman of the special committee) presiding.

Present: Senators DeConcini, McCain, Inouye, and Daschle.

Senator McCain. The hearing of the Special Committee on Investigations of the Select Committee on Indian Affairs will come to order.

The first panel will consist of William Pat Ragsdale, Acting Assistant Secretary for Indian Affairs, Department of the Interior.

Mr. Ragsdale, it is good to have you back. Thank you for coming back to see us.

Mr. Ragsdale. Thank you, Senator.

Senator McCain. Mr. Ragsdale, for purposes of the record you are still under oath.

Mr. Ragsdale. Thank you, Senator.

Senator McCain. Please proceed.

STATEMENT OF WILLIAM "PAT" RAGSDALE, ACTING ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY MS. H. ELBERT AND DON ASBRA

Mr. Ragsdale. Mr. Chairman and committee members, this afternoon we are here to discuss the Navajo Indian Nation's purchase of the Big Boquillas Ranch, child abuse and neglect on Indian reservations, and Indian contracting. Before we get into the discussion, I would like to provide a brief summary of each issue.

Mr. Chairman, I have provided a statement for the record, so if it is all right I will just simply highlight the statement very quickly.

The Big Boquillas Ranch purchase has been a controversy for some time, as the committee knows. Let me just sum up in a couple of sentences, and later on when we get into the questioning I am sure that we will go through the transaction in detail.

From my perspective and a personal review of the case file, the Bureau of Indian Affairs' actions with regard to this particular transaction have been both appropriate and reasonable.

With respect to the child abuse and neglect problem throughout Indian Country, that is an area that we have been focusing on for at least as long, if not before, my entry into the headquarters office in August 1987 as Mr. Swimmer's assistant, something that Ms. Elbert and the people in Education have been working on a great deal. I'll let Ms. Elbert speak to that a little bit later.

With respect to Indian contracting, the committee knows that by and large most of our contracting processes are either under Public Law 93-638 authority, the authority that we do most of our contracting business with Indian tribes across this Nation under, and we are now in the process of developing new regulations pursuant to the amendments adopted by the last Congress.

So far the committee's focus has been on the Buy Indian and minority set-aside contracting process, and later on this afternoon I'm sure we will have plenty of opportunity to get into that.

At this time this concludes my prepared statement.

[Prepared statement of Mr. Ragsdale appears in appendix.]

Mr. RAGSDALE. I would like to add one other document to the record, Mr. Chairman. It is a letter that we sent this morning by telefax to the Hopi Tribal chairman, who I note is here this afternoon, with respect to the problems that the reservation is suffering from as a result of the child abuse problem. Without your objection, Mr. Chairman, I would like to have that entered into the record.

Senator MCCAIN. What does it say?

Mr. RAGSDALE. It is a personal apology from me for the abuse of the Hopi children perpetrated by a Bureau of Indian Affairs employee, and it is a personal commitment from me that I will travel to the reservation to meet with whomever the tribe desires me to meet with to assess what we have done and what we need to do in the future.

Senator MCCAIN. Does that commitment include a desire to increase funding for counselling?

Mr. RAGSDALE. That commitment includes doing whatever we possibly can to address this problem.

Senator MCCAIN. Thank you.

Mr. RAGSDALE. Similar letters will be sent to the other Indian communities that have had similar problems.

[Letter from Mr. Ragsdale to the Hopi Tribe appears in appendix.]

Senator DECONCINI. Our counsel, Mr. Ballen, will proceed with questioning. Thank you, Senator McCain.

Mr. BALLEN. Thank you very much, Mr. Chairman.

Good afternoon, Mr. Ragsdale.

Mr. RAGSDALE. Good afternoon.

Mr. BALLEN. Mr. Ragsdale, you are the Assistant Secretary for Indian Affairs acting at the present time?

Mr. RAGSDALE. That's correct, the last 3 weeks.

Mr. BALLEN. Before the Senators begin their questioning, sir, I am going to briefly review with you some of the findings of the Special Committee on Investigations.

We will begin with the Buy Indian contracting area.

Sir, this committee has heard extensive evidence that the BIA's Buy Indian program is riddled by pervasive fraud and phony, sham, or "front" Indian contractors who take work from legitimate Indian firms.

For example, this committee heard from Jefferson Begay. He is an experienced Indian contractor in the Phoenix area. The Special Committee reviewed his books in an on-site inspection of his office and determined that he was, in fact, a legitimate contractor, something the BIA has failed to do. Begay testified that in his experience only two out of nine Indian contractors in the Phoenix area were, in fact, legitimate.

Similarly, the committee heard from Edward Danks. Danks is the president and founder of the National Association of Indian Contractors. He testified that in his own group nearly half of the members were, in fact, fronts rather than legitimate Indian contractors.

Special Agent James Elroy, assigned to this committee to investigate this situation, found that a majority of the Indian contractors were fronts.

For example, Agent Elroy testified that the following Indian-owned firms: Early American Contracting, Inc.; Ed Waln Construction, Inc.; Calvin Construction; Guy Gorman; Chuska Development Company; Southwest Indian Construction, Inc.; DJB Enterprises; and Indian Construction Services all had or currently have varying relationships with non-Indian owned firms that, at the very least, drain profits and take independence away from these firms.

Personally the committee heard from Gevene Savala. She came before this committee. She is a nurse with absolutely no construction experience. Her only qualification was that she was an American Indian. Her husband, David Savala, was a truck driver for the Arizona Refining Company.

This company set Mr. and Mrs. Savala up in a sham company and then obtained from the BIA millions of dollars in road construction projects, all of the profits of which were diverted to Arizona Refining.

When that sponsoring company was sold, the small bit of savings that Mrs. Savala managed to put into this company, Savala Asphalt, in the hopes of making it a go, was lost and she was bankrupt.

The committee heard from Kraig Kendall, one of the largest contractors in Oklahoma who, again, used a housewife, the wife of his business partner, to set up a pure shell company in order to qualify for Indian preference work. Again, none of the profits went to that company. He testified that, to his knowledge, his competitors did the same.

The committee heard from John Paddock, owner of John Paddock Construction, a large firm in the Southwest area. He testified that he, too, formed a shell company, Native American Construction, which was owned by Donald James, a carpenter for Paddock Construction.

He testified that all the Indian preference work obtained by this shell company was, in fact, performed by his own company, John Paddock Construction, and that all the profits went to John Paddock Construction, and that Donald James was, in effect, simply a salaried employee who performed carpentry work for Paddock.

The committee heard from Pat Chee Miller of PC&M Construction, an Indian-owned firm that represented to agencies, including the BIA, that a joint venture between PC&M and Springer Construction of Albuquerque, New Mexico, a non-Indian owned company, would split profits 51 percent to Miller and 49 percent to Springer, and that Miller would be, in fact, the managing partner of this joint venture.

But those were not the facts, again. There existed a hidden agreement between Miller and Springer that gave Springer control and management and only paid Miller a flat fee instead of the profit provided for in the joint venture agreement.

The committee also heard from William Aubrey, the owner of the largest Indian construction firm in the country, Blaze Construction, located in Yakima, Washington. He testified that he had a bonding arrangement with a non-Indian contractor, Albert DeAtley, which was not revealed to the BIA, HUD, IHS, or any tribal government, and that this arrangement called for the non-Indian, Deatley, to indemnify Blaze and, in return, receive up to 50 percent of the net profits of Blaze's work.

Mr. Ragsdale, isn't it a fact that until 3 weeks ago when the committee received its evidence, which I just detailed, the BIA knew nothing of all the fronts that I have outlined to you here today?

Mr. RAGSDALE. My understanding is that, with the exception of Blaze Construction, which the contracting officer of the Bureau of Indian Affairs spoke about before the committee the other day, that was the only one we had asked for additional information on and, as a matter of fact, performed an audit on.

Mr. BALLEN. And in that case you were not able to determine, in fact, what the committee determined through subpoenas?

Mr. RAGSDALE. The Inspector General did not find that there was any evidence to indicate that the Blaze Construction outfit was not a front.

Mr. BALLEN. Sir, isn't it true that none of these companies—or any others, for that matter—were ever subject to on-site inspections by the BIA?

Mr. RAGSDALE. That's correct, but it is not our normal procedure to perform on-site inspections by our contracting personnel.

Mr. BALLEN. And, in fact, Donald Asbra testified in his statement before this committee that there exists no mechanism within BIA for determining whether these fronting arrangements exist.

Mr. RAGSDALE. I read the statement and transcript over the weekend, and that would be a fair assessment to make.

I would like to point out, though, that during Don's testimony—and Don is here with me today—that you did not talk very much about contracting officer's representatives, which are usually the programmatic people that are on a particular project, particularly road construction projects. Based upon my personal knowledge, and being out on the field, the contracting officer's representatives do have a close supervision of the on-going construction projects. They do the testing and sign the reports and so forth. So I would be very surprised if CORs were not in day-to-day contact with the contractors that are engaged in the work.

Mr. BALLEN. Yet they did not determine that these fronting arrangements exist, did they?

Mr. RAGSDALE. That's correct.

Mr. **Ballen**. In fact, during the past 31 years only two companies have ever been decertified by BIA as not qualifying under Indian preference?

Mr. **Ragsdale**. That is my understanding.

Mr. **Ballen**. Yet, sir, the Special Committee on Investigation in just 8 months of work identified over 19 companies that should be subject to decertification or further investigation.

Mr. **Ragsdale**. That's my understanding, but the Special Committee on Investigation has some extraordinary authorities that contracting officer personnel do not have in carrying out their day-to-day governmental affairs.

Mr. **Ballen**. Mr. Ragsdale, this is not a situation, is it, that should come as a surprise to anyone at the BIA? In fact, we have not only the testimony of witnesses before this committee that the BIA knew about this problem and failed to act, but I have here a copy of an internal BIA memorandum from nearly 2 years ago, which I gave to you, that describes the exact problem the committee has presented in its last 3 weeks of hearings. Mr. Chairman, with your permission I would like to make this memorandum a part of the record.

Senator **DeConcini**. Without objection it will appear in the record.

[BIA memorandum dated October 13, 1987, follows:]

RECEIVED

OCT 19 1987

BRANCH OF TRANSPORTATION ASSISTANCE

OCT 13 1987

Transportation
Code 260:4558

Memorandum

To: Deputy to the Assistant Secretary – Indian Affairs (Trust and Economic Development)

From: Chief, Division of Transportation

Subject: Fraud Control in Road Construction Contracts

In Area program reviews, we have found major problems with lack of inadequate audits before award of road construction contracts, and other needs to provide reasonable effective control of fraud. We have found:

1. A contract, followed by others involving millions of dollars, where no pre-award audit was ever done – even though the inspector reported the work was being done by others than the contractor, and the contractor submitted a document stating another company would have full responsibility for the contract.

2. Inspectors' reports of excessive subcontracting, in which the investigation by the Contracting Officer consisted of a letter to the contractor and acceptance of a reply reiterating that no subcontracting was being done (the company doing the work was actually contracting to supply equipment with operators).

3. A company with many contracts which has a long-standing "management" contract with a big non-Indian contractor, and which has not been audited, to determine whether the relationship is proper.

4. A company, doing BIA contracts nationwide, which has a non-Indian contractor arranging its bonding. This was determined by a pre-award audit, but no further investigation was made of the relationship between the two companies, and the report was that no reason was found to justify refusal to award.

5. Requests by Contracting Officers for pre-award audits by the Inspector General (I.G.), in which the I.G. declines and the Contracting Officer then makes no investigation.

Under these circumstances, our road construction program, nationwide, is open to the possibility of massive fraud in Buy Indian contracting. I have requested provisions in the Buy Indian Regulations to provide some protection and control. Most of those requests have been denied, and the basic problem will remain even after adoption of the Regulations.

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The alternatives are:

1. No action. This will almost certainly result in a financial scandal which will call into question the ability of BIA to manage this program.

2. Major additions and changes to the Buy Indian Regulations. Since road construction is only one of the programs involved in Buy Indian procurement, we are unlikely to secure agreement on this.

3. A policy of careful investigations by BIA Contracting Officers before award of Buy Indian road contracts, investigation of reported violations, pre-qualification investigations, and prosecution of fraud or attempted fraud. This is very difficult because of varying Area policies, full-time equivalency (FTE) restrictions, and lack of expertise in some Contracting Officers.

4. Secure the I.G.'s agreement to make adequate pre-award audits and the other investigations for the contracting officers. The I.G. has some of the same restraints as our Contracting Officers, plus a feeling that it is really a BIA responsibility.

5. Establishment of an Investigatory Branch in the Division of Transportation to provide preaward and on-stream audits and investigations to assist Contracting Officers. This can be done, since the law provides for no limit on necessary personnel in Indian road construction. If the problems of the other alternatives cannot be solved, and if the other offices involved would rather relinquish this responsibility than fulfill it, this is the alternative I recommend.

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BUY:BUY IND-12

Mr. **Ragsdale**. If I may, Mr. Ballen, I'd like to comment on that memorandum. When we discussed that the other day——

Mr. **Ballen**. Mr. Ragsdale——

Mr. **Ragsdale** [continuing]. Unless you would rather defer to a little bit later time.

Mr. **Ballen**. Mr. Ragsdale, let me just read from it for the record and then you can feel free to comment.

Mr. **Ragsdale**. Thank you.

Mr. **Ballen**. I think then we would be talking about the same thing. We provided you with a copy of that last week, correct?

Mr. **Ragsdale**. That's correct.

Mr. **Ballen**. The memorandum is dated October 13, 1987, and it is to the Assistant Secretary, Indian Affairs, Trust and Economic Development. It is from the Chief, Division of Transportation. The subject: Fraud Control in Road Construction Contracts.

I will quote from the memorandum.

"In area program reviews we have found major problems with lack of adequate audits before award of road construction contracts and other needs to provide reasonable, effective control of fraud."

It lists five examples very similar to the kind of examples this committee has found in its investigation.

One, a company with many contracts which has a longstanding "management" contract with a big non-Indian contractor. The committee found the same kinds of occurrences.

Another example listed is a company doing BIA contracts nationwide which has a non-Indian contractor arranging its bonding. Again, a phenomenon the committee uncovered fully in its investigation.

The memorandum goes on to state:

> Under these circumstances, our road construction program nationwide is open to the possibility of massive fraud in Buy Indian contracting. I have requested provisions in the Buy Indian regulations to provide some protection and control. Most of those requests have been denied, and the basic problem will remain even after the adoption of the regulations.

The author of the memorandum, the Chief of Transportation, goes on to state:

> The alternatives are: no action. This will almost certainly result in a financial scandal which will call into question the ability of the BIA to manage this program.

Now, Mr. Ragsdale, I'd like to ask you: isn't that exactly what has occurred with the committee's investigation? We have uncovered a major scandal which has "called into question the ability of the BIA to manage this program." Wasn't that, in fact, warned two years before this committee began its investigation?

Mr. **Ragsdale**. I'd like for Don to respond to that specific memo. I would say that if the committee has found that we have a problem with respect to the administration of minority contracting, I don't think that it is a problem that is common just to the BIA. I think that all Federal agencies that have a responsibility to monitor and manage minority and set-aside contracts and so forth—what the committee has found concerning our administration of those contracts—and I'm not specifically just talking about Indian contracts, but minority contracting overall.

Mr. BALLEN. Mr. Ragsdale, that is a point well taken. Indeed, the committee found these problems not only with BIA but with HUD, IHS, and certainly the SBA. But my question to you is that there was an internal memorandum in the BIA that pointed out the possibility of these problems nearly 2 years before the committee began its investigation.

Mr. RAGSDALE. Mr. Ballen, after we talked and I brought the copy of the memo that you delivered to me on Friday back to my office, I indicated I thought I had seen the memo before. I was incorrect. The memo that I saw before was the first memo that the Transportation Chief sent through my office to the contracting officer, which the contracting officer responded to. As I understand it, this response that you have read into the record was his response to Mr. Asbra's comments concerning their first proposal with regard to our regulations.

Mr. BALLEN. Before Mr. Asbra answers, let me just ask you one question, sir. Doesn't this memorandum in broad contours presage what, in fact, the committee has found: massive fraud, major financial scandal, et cetera?

Mr. RAGSDALE. I'm very reluctant to come to that judgment at this point in time. I would acknowledge, after reading the full transcript and the proceedings that have taken place so far, that any person with reasonable intelligence reading through those transcripts would probably come to that conclusion, but I just finished reading those this weekend and I'd like a little time to assess that before making that determination for the Bureau of Indian Affairs.

If you want me to acknowledge that there is a problem and that there is a breakdown in processes and that the Federal Government or the Bureau of Indian Affairs, from a contracting perspective, lacks some authorities and lacks some systems to do adequate follow-up on these kinds of contracts, I would certainly acknowledge that. Anyone would have to be a fool not to based upon the evidence that has been presented thus far.

Mr. BALLEN. Thank you, sir.

Mr. ASBRA. Mr. Ballen.

Senator DECONCINI. Please identify yourself for the record. I will point out that you were administered the oath last week, I think.

Mr. ASBRA. Yes, sir.

Senator DECONCINI. You are still under oath.

Mr. ASBRA. Yes, sir.

Senator DECONCINI. Please go ahead.

Mr. ASBRA. I am Donald F. Asbra, Chief of Contracting and Grants Administration for the Bureau.

I am at a little bit more of a disadvantage than Mr. Ragsdale in that I finished reading that testimony about 30 minutes ago just before we came here. But what I did do was go through it as best I could and check the contractors that had been listed in all that testimony against our list of Indian firms under the Buy Indian Act. I found that for about 90 percent of them I don't have any record of them being Buy Indian contractors. They appear to be basically those that have done work on HUD jobs.

I also found out something else, and that is, to show you the problems that we discussed the other day, our Phoenix area office did have a pre-award audit down of Ed Waln Construction Company, as an example, by the Inspector General's Office before they started doing business with them. Once again, the Inspector General went in and did an audit and couldn't find anything that would indicate that Mr. Waln was anything but on the up and up. Once again, I think that points out some of the problems.

With respect to Mr. Ball's memorandum to the Director of Transportation, it is interesting to note what his solution to the problem is, and that was to hire a whole lot of staff in the Division of Transportation and to send them out and do a lot of investigations.

My counter proposal to him was that we should put some money up front and enter into some indefinite quantities contracts with some private investigative outfits so that we could call upon them in any instance where we thought we had a problem. I am one of these people that doesn't like to set up a lot of staff if we can do it on the outside.

I'd once again point out that without trained investigative staff it is almost impossible to pick up these frontal organizations. They can be beautiful on paper, but that doesn't make any difference. They can have all kinds of arrangements.

Mr. BALLEN. In fact, that is what this committee found.

Mr. ASBRA. That's right.

Mr. BALLEN. Mr. Ragsdale, let me briefly review another area that the special committee uncovered, and this is child sexual abuse that is occurring in BIA schools. As we talked earlier, you acknowledged that you have been provided with the full transcript and record here, as in all the other areas that I am questioning on.

First let's turn to the *Paul Price* case.

The committee heard testimony from parents, teachers, school administrators, and, indeed, obtained a confession from the child molester himself, Paul Price.

This testimony established beyond question that Price was a teacher at the Cherokee Elementary School for 14 years, and that throughout the entire 14-year period allegations against Price for child molestation were made and nothing was done.

In June 1971, Mr. Paul Price was dismissed from the Campus Laboratory School by Doctor Arthur Justice, the principal of that school, for molesting young boys.

In August 1971, 3 months later, Mr. Price joined the Cherokee School as a teacher for the elementary grades.

No one from the BIA school ever called Mr. Price's former school for a reference. Despite that fact, Doctor Justice wrote a letter to the Cherokee School stating that he had dismissed Price for child molestation. That letter went to the principal of the school, T.J. Dupree.

Again, in 1974, Doctor Justice contacted two teachers at the Cherokee School, as well as the chairman of the Cherokee Tribal Council and the chief of the tribe at the time, John Crow, again in reporting Price's sexual abuse of minor children. Doctor Justice's allegations against Mr. Price were reported to the acting BIA superintendent at the time, Robert Evans.

Now, shortly after Mr. Evans was informed of the allegations against Price, a meeting of the teachers was called by BIA officials who told the teachers why they should not make "slanderous allegations." Mr. Ray Maldonado allegedly made this speech and Mr. Maldonado is now a BIA superintendent in Washington.

This is not the end, sir.

In 1983 or 1984 a teacher's aide at the school reported to the school nurse, and subsequently to the principal, Mary Widenhouse, that Mr. Price was fondling a boy in the hallway and this teacher's aide had personally observed this conduct. The aide was not contacted by the BIA or anyone else about her allegation and her observation other than a brief conversation with Mary Widenhouse, principal.

Similarly, when the mother of a boy molested by Mr. Price reported this information to the school, the school officials did nothing. In fact, Roy Lambert, assistant principal at the school, accused a parent of a victim of fabricating the story regarding Price.

Another parent of a victim, a different victim, stated that the same school administrator, Roy Lambert, had said he would never apologize to her, that he saw nothing wrong with his conduct on the Price issue.

Mr. Lambert, by the way, is still an administrator at the school.

Sir, isn't it a fact that no BIA officials at Cherokee were ever disciplined as a result of their failure to report Mr. Price?

Mr. RAGSDALE. Not to the best of my knowledge.

Mr. BALLEN. Isn't it a fact that the principal at Cherokee, Mary Widenhouse, was promoted to the central office in 1984, even though she failed to take action against Price and failed to report Price to the central office?

Mr. RAGSDALE. I think that is correct that Ms. Widenhouse did transfer to the central office. I am not aware of the circumstances.

Mr. BALLEN. Isn't it true that Mr. Roy Lambert has never been disciplined for his failure to apologize in his emphatic insistence to the parents that Price was not guilty?

Mr. RAGSDALE. According to the report that I just read that is correct.

Mr. BALLEN. Don't you believe that the BIA should formally apologize to the parents who have not received such an apology?

Mr. RAGSDALE. Yes; and I, after reading the record, composed the first letter to start that process to the Indian communities, which I have asked be entered into the record.

Mr. BALLEN. Sir, isn't it frankly inexcusable that a pedophile like Mr. Price should be able to thrive at a school for 14 years? His own testimony to us was that his activity was fairly open.

Mr. RAGSDALE. It is inexcusable.

Mr. BALLEN. Isn't it also inexcusable that teachers who come forward with allegations against pedophiles should be lectured about slander?

Mr. RAGSDALE. I would think so. Yes.

Mr. BALLEN. There are other cases, Mr. Ragsdale, besides the *Price* case in North Carolina.

In 1981 Terry Lee Hester, a teacher at the BIA school in Navajo, was convicted of child sexual abuse. He had a prior record. In fact, he listed a sexual abuse crime on his application to the BIA; yet, after Hester, no immediate action was taken to require background checks by the BIA.

We have the *John Boone* case at Hopi, which we heard testimony about.

The special committee heard testimony that there were reports to law enforcement authorities about John Boone, a teacher at the Polacca Day School at Hopi, and to the principal of the school, years before he was arrested.

Now, Boone was involved with molesting 142 students at the Polacca Day School.

The testimony before this committee showed that a parent made a report of her concerns about John Boone to a principal at Polacca approximately 1 year before Mr. Boone was arrested.

Isn't it a fact, sir, again, that the principal did not contact law enforcement, he did not contact social services, he did not contact either his superiors at the Office of Indian Education Programs in Gallup, NM, or the central office in Washington, DC, with the reports that he received from the parents?

Mr. RAGSDALE. It is my understanding that that is accurate.

Mr. BALLEN. Sir, the *Boone* case came to the attention of law enforcement authorities finally in February 1987. There was no disciplinary action or administrative action whatsoever taken against any employee of the school or the Office of Indian Education Programs for failure to act earlier, was there?

Mr. RAGSDALE. That's correct.

Mr. BALLEN. Now, after Boone was removed from the Polacca School, Mr. Ragsdale, Lee Cargile was the BIA employee responsible for counselling the students. Isn't it a fact that instead of counselling the students, Cargile gave them inappropriate questionnaires about sexual abuse and had the temerity to ask the U.S. Attorney's Office to pay for a trip to New York so that he could write a book on the *Boone* case?

Mr. RAGSDALE. That's what I have been advised.

Mr. BALLEN. And the BIA never learned what Cargile was doing at the Polacca School because no one at the BIA had ever bothered to even visit the community or monitor the situation at that school after Boone was arrested; is that true?

Mr. RAGSDALE. That's my understanding.

Mr. BALLEN. Mr. Cargile was never disciplined, again. Instead he was simply transferred to another school only 11 miles away; is that correct?

Mr. RAGSDALE. Excuse me? Could you——

Mr. BALLEN. Would you like me to repeat the question, sir?

Mr. RAGSDALE. Yes, I was still dwelling on the last statement because I do know that our child protection teams—there has been a lot of effort to try to deal with the Hopi situation since I have been in the central office.

Mr. BALLEN. Yes; but not at the time that Mr. Cargile was——

Mr. RAGSDALE. That's correct.

Mr. BALLEN [continuing]. Engaging in his activities?

Mr. RAGSDALE. That's correct.

Mr. BALLEN. Which was immediately after Mr. Boone was arrested.

Now, again, Cargile wasn't disciplined; instead, he was transferred to another school only 11 miles away at Keam's Canyon; is that correct?

Mr. **Ragsdale**. That's my understanding. Yes.

Mr. **Ballen**. Indeed, he was never monitored at this new school for over 1 year again until outside professionals again had to warn that he was drunk on the job?

Mr. **Ragsdale**. That's the report I have.

Mr. **Ballen**. Now, Doctor Ross had responsibility overall in these matters, did he not?

Mr. **Ragsdale**. That's correct.

Mr. **Ballen**. Sir, has anything occurred with respect to Doctor Ross?

Mr. **Ragsdale**. Doctor Ross has been temporarily relieved of his duties as of last Friday until we can have an opportunity to review his conduct and administration of this particular matter and others.

Mr. **Ballen**. And that was as a result of the committee's investigation in this area?

Mr. **Ragsdale**. A result of the committee's investigation and a determination by myself and Mr. Babbitt to take that action.

Mr. **Ballen**. Sir, isn't it a fact that the current superintendent at Hopi, Doctor John Wahnee, was hired without any inquiry by the BIA of how he had handled the *Paul Price* case?

Mr. **Ragsdale**. Apparently not.

Mr. **Ballen**. And, in fact, he was involved in the *Paul Price* case, which we just asked about, as the superintendent there, and then came to Hopi without any inquiry whatsoever?

Mr. **Ragsdale**. I would just have to say that would be my assumption based upon the findings that have been made available to my staff and no one has refuted that.

Mr. **Ballen**. I understand.

Isn't it a fact that it took from 1981, when the facts of the *Hester* case first became known, until November 1988, for the BIA to implement a comprehensive background check of its employees who would be in contact with children?

Mr. **Ragsdale**. That's correct.

Mr. **Ballen**. Let me ask you this question again. Isn't it a fact, sir, that it took from 1981, when the facts of the *Hester* case first became known, until November 1988, for the BIA to implement a comprehensive background check of its employees who would be in contact with children?

Mr. **Ragsdale**. That's correct. That was the date that the final instructions for the clearance process—there was work done prior to that, but obviously we were long and late in getting the clearance processes developed.

Mr. **Ballen**. Sir, isn't it also a fact that it took from at least 1985, when the *Paul Price* case first came to light, until December 1987, for the BIA to implement a reporting policy for allegations of child sexual abuse?

Mr. **Ragsdale**. There has always been a policy in place to report significant incidents, but apparently that policy was not followed by and large throughout the Bureau of Indian Affairs with respect to these kinds of cases.

Mr. **Ballen**. Sir, all 50 States have mandatory reporting laws. Has the BIA asked Congress to pass such a law?

Mr. **Ragsdale**. No; we have not.

Mr. BALLEN. Mr. Ragsdale, isn't it also true that the Acting Director of the BIA's Office of Indian Education at the time of Price's arrest never even knew of the *Price* case? That was his testimony before this committee.

Mr. RAGSDALE. Then that is correct.

Mr. BALLEN. What does that say about communication between the field and central office?

Mr. RAGSDALE. It would say that the communication in this area is terrible.

Mr. BALLEN. Mr. Ragsdale, I'm going to turn to the final area of the committee's inquiry this afternoon.

As you know, sir, the committee heard testimony a couple of weeks ago concerning the Navajo Nation's purchase of the Big Boquillas Ranch, a 491,000-acre parcel located near Seligman, AZ.

That testimony included evidence that the Navajos were defrauded in this transaction. According to the testimony before this committee, the Navajos paid over $7 million more than they had to for the property. The $7 million ended up profiting three individuals: Byron T. Bud Brown, Tom Tracy, and Peter MacDonald, Chairman of the Navajo Tribe.

The committee heard testimony from Mr. Eugene Twardowicz, a criminal investigator working for the committee, that Brown and Tracy worked out a plan for Tracy's company, Tracy Oil and Gas, to buy the property at $26 million and sell it in a "flip" to the Navajo Nation for the sum of $33.2 million.

Brown came before this committee and testified under immunity that Peter MacDonald's cut in the profits for pushing through the deal was between $500,000 to $750,000.

Brown, however, according to his testimony, paid MacDonald in small amounts to avoid detection for a total of approximately $100,000, including a $25,000 wire transfer and a BMW automobile.

This testimony was corroborated by secret tape recordings of Peter MacDonald and Bud Brown and by the testimony of the chairman's son, Peter MacDonald, Jr., who testified as to the code used of "golf balls" to transfer cash to his father.

The committee also learned from Chairman MacDonald's son, Peter, Jr., that the chairman, Bud Brown, and Peter MacDonald, Jr., conceived of a plan to try to cover up this scheme and the $25,000 wire transfer and the BMW lease to make it appear that these items were really intended for Peter MacDonald, Jr., when the truth was that they were for his father.

Lastly, the committee heard from Mr. Twardowicz that the Navajo Administration, under the direction of Mr. MacDonald, tried to push the purchase through this transaction, and indeed did push it through, the Navajo Tribal Council.

Mr. Twardowicz testified, for example, that Edison Woods, the Navajo appraiser, had originally valued the property at $50 to $63 an acre, far less than the $33 million sale price. Indeed, the head of the Navajo Land Administration, Ninebah Cahn, had ordered Edison Woods to raise his appraisal to $68 an acre in order to equal the $33 million sale price.

Now, the BIA has just learned of the committee's findings in this regard over the past several weeks. Would that be correct, sir?

Mr. RAGSDALE. That's correct with respect to the evidence that would indicate that there was insider dealing on the particular transaction and the transaction, itself, insofar as the conduct of some tribal officials was very improper.

Mr. BALLEN. And that evidence has just come to the BIA's attention?

Mr. RAGSDALE. That's correct, based upon the proceedings in this room.

Mr. BALLEN. Thank you.

Mr. Ragsdale, during the spring of 1987, when the tribe was considering its purchase of the Big Boquillas Ranch, the BIA participated in a review of the tribe's appraisal of the property, and Mr. Dean Moss from the BIA Realty Office was selected to perform the review; is that correct?

Mr. RAGSDALE. That's correct.

Mr. BALLEN. Sir, we understand that Dean Moss was a junior appraiser who had been working at the BIA for less than 1 year when he was assigned to this review. If that is correct, sir, why was a junior appraiser assigned to appraise property of this magnitude where $33 million was at risk?

Mr. RAGSDALE. I wasn't aware of the background or the experience of the appraiser in the file. I did not look into that. But as I understand our procedures for conducting appraisals, which I understand we follow pretty much nationwide, every appraisal is reviewed by a senior review appraisal before it becomes final.

Now, the upshot of the review of our appraisal was that we came out with a value of—and this is the normal way we put together an appraisal estimate: we provide the tribe with a range of values. In this instance I think we estimated the property to be worth between $40 and $58.

Mr. BALLEN. However, before the BIA came to that determination, sir, in May 1987 Dean Moss' original appraisal agreed with the tribe's appraisal of $33 million. Would that not be true?

Mr. RAGSDALE. Mr. Ballen, in my review of the file I didn't come to that conclusion. I would have to go back and check. In fact, are you sure that Mr. Moss was a BIA appraiser?

Mr. BALLEN. Yes, sir.

Mr. RAGSDALE. I thought the BIA appraisers involved were a Mr. Pencall——

Mr. BALLEN. That came later on, which is my next question.

Mr. RAGSDALE. Okay.

Mr. BALLEN. That came in July of 1987. And, in fact, it was not until July 2, 1987, a few days before the scheduled closing which occurred in July, that the BIA wrote to the tribe to tell the tribe that the property had been offered for sale publicly at $25 million only several years before, and it was at that point in July that the BIA wrote to the tribe.

My question to you is this: why did it take until July for the BIA to learn that the property had been previously publicly advertised for sale at $8 million less than the Navajos were now paying?

Mr. RAGSDALE. There may be some confusion here, because I thought that the original appraisal had been done totally by the tribe and that Mr. Moss was—I assumed Mr. Moss was the reviewer appraiser for the tribal office lands, and that may have been a mistaken assumption on my part. But I didn't think that the Bureau of Indian Affairs appraisal came in until subsequent to that first one that I saw in the case file.

But with respect to your question, the Navajo Tribe would not have to get an appraisal from the Bureau of Indian Affairs to acquire fee property. Now, normally——

Mr. **Ballen**. I understand that.

Mr. **Ragsdale** [continuing]. If they make that request then we would provide that to them insofar as technical assistance and so forth.

Mr. **Ballen**. I understand that, and I am not questioning that, sir, but what I am questioning is that in the "Wall Street Journal" the Big Boquillas Ranch was publicly offered for sale in 1984 for $25 million, and it was a big page advertisement in the "Wall Street Journal," a periodical of some note.

Now, why did it take the BIA until July, less than 1 week before this transaction was to close, to discover that? You would think that when doing an appraisal one of the first things you would do would be to check to see whether that land was offered publicly at any time in the past.

Mr. **Ragsdale**. The answers I don't know without further checking in that.

Senator **DeConcini**. Along that line, Mr. Ragsdale, if you were to make further checking, where would you check that?

Mr. **Ragsdale**. I would check the Bureau of Indian Affairs' records and check with our appraisal branch specifically to find out more of the detail of the procedure, what the normal standard operation would——

Senator **DeConcini**. May I ask that you do that please?

Mr. **Ballen**. Yes, sir.

Senator **DeConcini**. And report to us whether or not there was a check on prior sales, and, if so, what they were. I'd like to see that if you don't mind.

Mr. **Ballen**. I would be glad to, Senator.

Senator **DeConcini**. Thank you.

[The information to be supplied follows:]

The Senate Select Special Committee on Investigations held Hearings recently at which time Mr. William P. Ragsdale, Acting Assistant Secretary, was asked to supply the Committee with specific information on the Navajo Tribe's purchase of the Big Boquillas Ranch. The Committee's questions and our responses are as follows:

1. Why did it take the BIA until July, less than a week before the "transaction" was to close, to discover that the Big Boquillas ranch was publicly offered for sale for $25 Million.

   In telephone conversation and written communication with our Navajo Trust Office we were able to ascertain the following:

   The BIA Navajo Appraisal Office did not perform a full, complete appraisal of the Big Boquillas ranch. They found out on May 12, 1987, that the Tribe was interested in buying the property and on May 26, 1987, the Tribe officially requested that BIA review their appraisal report. At that time the Navajo Area Office did perform an appraisal review of the Tribe's appraisal of the Ranch. The Navajo Tribe's land appraiser valued the ranch at an estimated market value of $33.4 million in late April, 1987. The BIA Navajo Area Office appraisal review was performed by an inexperienced staff appraiser, who had never done a ranch appraisal before, as their Chief Appraiser was on extended sick leave from May 11, 1987, to June 11, 1987. As a result, their initial appraisal review, dated May 26, 1987, approved the Navajo Tribe's appraisal which estimated the market value of the Big Boquillas Ranch at $33.4 million. Upon the return to work of their Chief Appraiser in mid-June of 1987, their Memorandum of Opinion approving the Navajo Tribal appraisal of $33.4 million was withdrawn.

   On July 2, 1987, by letter to Navajo Chairman Peter MacDonald, they informed the Navajo Tribe that the BIA estimate of market value of the Big Boquillas was the previous listing price of $25 million. This was the price asked for the ranch in 1986 and 1987. Both the appraisal done by the Navajo Tribe's land appraiser and the initial BIA appraisal review statement estimated the market value of the Big Boquillas Ranch only on a per acre basis.

2. Senator DeConcini requested that BIA report to the Committee on whether or not there was a check on prior sales.

   BIA's Navajo Area Office Chief Appraiser, in mid-June of 1987, performed a thorough examination of the pertinent facts relating to the market value estimate of the Big Boquillas Ranch. This included searching the Chain of title and determining if there were previous sale offerings of the ranch, the animal unit carrying capacity of the ranch and the estimated value per animal unit of the ranch.

Senator DECONCINI. Mr. Ballen.

Mr. BALLEN. Thank you, Mr. Chairman.

Did the BIA suspect, prior to the closing on the ranch, that fraud might be involved in the transaction?

Mr. RAGSDALE. I saw a note in the file—the same note that I think I provided the committee staff—that would indicate that one of our realty personnel or appraisal personnel suspected that this particular transaction was not a clean one.

Mr. BALLEN. Sir, given that, why did the BIA not report these suspicions of fraud to the Navajo Tribal Council?

Mr. RAGSDALE. The answer to that is that I cannot say for sure. I do know that it was reported to the Assistant Secretary for Indian Affairs, and he requested the Inspector General to review the matter, which would be the normal process that our employees are to follow. Suspicions of criminal activity, if they are supported by any reasonable evidence or suspicion, are to be reported to the Inspector General under our current procedures.

Mr. BALLEN. Thank you, Mr. Ragsdale.

Senator DECONCINI. Senator Nickles is with us and his demands require that he leave in just a few minutes and he wants to pose at least one question to you on a different subject matter.

Senator Nickles.

Senator NICKLES. Mr. Chairman, thank you. Again, let me thank you for your willingness to allow me to participate in the hearing, and particularly at this time since I do need to leave.

Mr. Ragsdale, did you have anything further that you wanted to add concerning BIA's investigation of the possible corruption in gaming, particularly in Southwest Oklahoma in the Lawton area?

Mr. RAGSDALE. No, sir; not at this time.

Senator NICKLES. Anything else concerning the revelations that were made concerning corruption in gaming—not necessarily just gaming, but contracting—in Oklahoma?

Mr. RAGSDALE. No, sir; I have not focused on that for purposes of reporting to the committee.

Senator NICKLES. I understand.

Mr. RAGSDALE. I think I would defer comment on that at this time.

Senator NICKLES. Thank you very much.

Thank you, Mr. Chairman.

Senator DECONCINI. Mr. Ragsdale, thank you very much.

Let me say for the record, Mr. Ragsdale, your previous testimony here and your testimony today—and, quite frankly, the assistance that you have given this committee—is greatly appreciated, and I applaud you for that.

I realize we had certain authority here to insist on information, but I am advised that you were cooperative and forthcoming with records and items that we could have had to dig out and would have made it a lot more difficult and you assisted us in that.

And you certainly have indicated the problems that the BIA has encountered and the failure of very good answers other than clear admissions of the particular errors that have occurred.

Let me just touch base on a couple of quick things so that I understand it on the Big Boquillas Ranch.

When the tribe made its $8.2 million down payment were these funds from unappropriated tribal reserves? Or do you know?

Mr. RAGSDALE. I cannot confirm. We have been trying to determine the source of the funds, and my understanding is that the Navajo Tribe has not provided us with an accounting of where those funds came from except that they were not withdrawn specifically from trust accounts. So we would not have approved those in a tribal budget to withdraw those from trust.

Senator DECONCINI. Is it correct that the unappropriated tribal reserves may well have contained funds collected from royalties on coal and other natural resources?

Mr. RAGSDALE. Yes, sir; that's quite likely.

Senator DECONCINI. And if that is true, those would be considered trust funds contained in this account; is that true, too?

Mr. RAGSDALE. I think those would have come from the trust assets of the tribe. But if the tribal contract approved by the secretary provided for a direct payment to the tribe, then the Bureau would have no supervision over those funds after the payment was made pursuant to that kind of a contract.

Senator DECONCINI. So the secretary can, in essence, waive or permit funds that normally would be trust funds to be diverted to an unappropriated account, and thereby relieving the secretary of the responsibility under the trust fund; is that what you are saying?

Mr. RAGSDALE. That's correct, and that authority is provided specifically in the Indian Reorganization Act for tribes to do that.

Senator DECONCINI. And is that the case in this instance, or do you know?

Mr. RAGSDALE. From what I know about the account, these funds probably more than likely came from direct tribal revenues not under the supervision of the secretary.

I think the answer is that the only way that we will know is to have somebody with subpoena authority go out to the tribe and check the accounting records so that you can ascertain source and application of these particular funds.

Senator DECONCINI. Do you have that authority?

Mr. RAGSDALE. No, sir; we do not.

Senator DECONCINI. If you made such a request—have you made such a request?

Mr. RAGSDALE. My understanding is that the Navajo Area Office has made such a request. Last week my office called the office that has that responsibility and the phone had been disconnected.

Senator DECONCINI. Do you plan on taking any other efforts to see that the request is delivered to the appropriate people?

Mr. RAGSDALE. Yes, sir; after we have documented that we have made the request formally to the tribe, if the information is not forthcoming then I will request the Inspector General to advise the United States Attorney.

As the chairman knows, I understand this transaction is before grand jury in Arizona, and it could very well be that the Justice Department is already investigating the matter.

Senator DECONCINI. It could be. And I think it would be worthwhile for the record to indicate what you did do, in fairness to the BIA, of what action you have taken besides just having the telephone disconnected, and if, in fact, you turned it over to the IG well and good, but I think it would be worthwhile to have the record demonstrate that, if you would.

Mr. **Ragsdale**. I would be glad to, Senator.

[The information to be supplied follows:]

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FILE COPY
SURNAME:
JStarr 4/11

Mr. Kenneth Ballen
Chief Counsel
Special Committee on Investigations
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Mr. Ballen:

On March 3, 1989, I sent a memorandum to the Inspector General for the Department of the Interior requesting information about the Bureau's investigation of the circumstances surrounding the purchase of the Big Boquillas Ranch by the Navajo Nation. On March 13, 1989, the Inspector General responded with the attached memorandum stating that all tribal records relating to this matter were subpoenaed by the Federal grand jury and cannot be released under grand jury secrecy rules. All government records relating to the ranch purchase are currently in your possession.

Please advise if I can be of additional help.

Sincerely,

/S/ W. P. Ragsdale

Acting Assistant Secretary - Indian Affairs

Enclosure

bcc: Secy Surname - Secy RF (2) - AS/IA Surname - AS/IA Chron -
101A
IA/00:JStarr:jdb:4/5/89:x2087
RET:4/10/89:LSaunders:jdb
MM\STARR\SPLCOMM (p. 2)

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
WASHINGTON, D.C. 20240

MAR 13 1989

[illegible]

Halty

Memorandum

To: Acting Assistant Secretary - Indian Affairs

From: Inspector General

Subject: Big Boquillas Ranch Investigation

This is in reference to your memorandum of March 3, 1989, requesting information about our investigation of the circumstances surrounding purchase of the Big Boquillas Ranch by the Navajo Nation. We have contacted the case agent assigned to this matter and have learned that all tribal records relating to use of tribal funds for purchase of the ranch which we obtained were subpoenaed by a Federal grand jury and cannot be released under grand jury secrecy rules. Our agent advised that he reviewed, but did not take custody of, additional records relating to the ranch purchase which were located at the BIA office in Window Rock, Arizona.

I hope this information will be of assistance.

James R. Richards

James R. Richards

Senator DeConcini. Let me just touch base on the child abuse cases. We went into detail here. In the case of Boone there appeared to be no outreach to the schools by the local or regional BIA school authorities. Do you know if there was any outreach? We have not come across any such thing.

Mr. Ragsdale. No, sir.

Senator DeConcini. There was not. Are you aware that it wasn't until the Office of Primary and Secondary Education went to Polacca in August 1987, that the school made any outreach to the community?

Mr. Ragsdale. That's my understanding. As a matter of fact, I came into the Washington office in August 1987 and, at that time, the personnel from Ms. Elbert's shop and Mr. Babby's shop were reviewing the incident and were organizing to do just that.

Senator DeConcini. They had already started moving the forces to see that some outreach was available?

Mr. Ragsdale. Yes, sir.

Senator DeConcini. Are you aware that such crisis intervention routinely takes place around the country when a school is hit by physical violence?

Mr. Ragsdale. That's what I understand. Yes, sir.

Senator DeConcini. Is there a reason that you can give why the Office of Indian Education Programs has not taken such action in BIA schools? Or do you know that they have taken such action in BIA schools? Either way.

Mr. Ragsdale. Senator, I started my career in the Bureau of Indian Affairs as a school teacher. And, in fact, if I hadn't started I would probably not be sitting here today. It is very difficult for me to understand why our system totally broke down, except let me say, in all frankness and candor, I think that is exactly the reason that I left Indian Education after I got out of the Marine Corps in 1973, I guess is when I finally went back into the system. We have had a lot of things happen in education in the late 1960s and early 1970s that also happened in the public school side.

I think that Indian Education, in particular, has had a more difficult time in recovering from that tumultuous period. We have, at the same time, turned over a large number of our educational facilities to the tribes, and I think in a lot of instances—at least some of the instances that I saw in Arizona—the tribes do a very good job and I agree and I support that that should be the focus for local school control. But the breakdown in leadership and chain of command and communications throughout the Indian Bureau in education is something that most people that have a familiarity with Bureau operations would all acknowledge right away.

I'm not condemning any of those personnel. I think that Congress has had a role in this with respect to the passage of Public Law 561, which essentially changed the organizational structure of the Bureau of Indian Affairs. And I'm not defending the old organizational structure in any high regard, but any time that you have over 115 or 120 schools reporting to headquarters Washington directly, and having to rely on another administrative system to support your operations, you are going to have some problems. That is too much of a span of control for anybody to handle, along with all of the other reforms and changes in education. So that is all contributory.

It is still not excusable for these kinds of things that have happened to have happened. I'm not——

Senator DECONCINI. I think it is fair to state that your answer demonstrates that there are many problems here, and you recognize, obviously, that the BIA has fallen way short. But you also point out that, at least in the area of Public Law 561, Congress might have attributed or contributed to some of this problem by having all these schools report to Washington. Is that what you are saying?

Mr. RAGSDALE. Yes, sir.

Senator DECONCINI. Where else would you think—here's your chance—that Congress has contributed to those problems? I'm not sensitive about this. Be as expansive as you want to be.

Mr. RAGSDALE. Well, I want to make it clear that I am subject to being corrected at any point in time, but these are just my perceptions.

My perception is that the Office of Education—and I think it is both an Executive and Legislative problem—has had a difficult time getting to establish normal school standards for educating of kids in school because of a perception, and somewhat justified, that our kids are special and that we should do everything that we need to do to allow for local input and allow for different kinds of standards than would be applied in the public school sector.

I can recall a couple of years ago that one of the committees took action to freeze all of our regulations so that we could not impose new educational standards.

I think in education it has been an accumulative effect.

Senator DECONCINI. Do you think Congress has applied a double standard or a second standard to Indian education different than they apply——

Mr. RAGSDALE. I think so, and at the same time I think that the Executive has failed to make the point as to what the effects of some of the direct management by the Congress is going to have on school operations. I think we have failed to be honest and forthright with the Congress about some of these problems.

Senator DECONCINI. Do you care to submit some examples of what you consider two standards? I'm talking about for the record, on a constructive basis.

Mr. RAGSDALE. Yes, sir.

Senator DECONCINI [continuing]. Where you feel that this standard is so different that it contributes to the problem. I think you are probably right. I'd like for the record to have a more clear, distinct identification.

Mr. RAGSDALE. I will attempt to do that, and if I find, based upon objective review, that my judgments are too harsh, then I will retract some of my judgments at that time.

[The information to be supplied follows:]

Effect of Congressional Application of Standards to Bureau Administration of Schools

- Reduced ability of the Bureau to link responsibility with accountability.
  - New grant procedures already adopted by 23 schools and specified in P.L. 100-297 reduces the role of the BIA to accepting applications reviewing reports (but not acting upon them) and funneling money to them, but leaves full responsibility for providing programs, including accepting retrocession, with the Bureau. The grant recipients and tribes are carrying out the Federal responsibility, without being held accountable as well. The Bureau fully supports reducing administrative complexity and local assumption of program operation - as long as the parallel accountability is assumed by the program operater as well.
- Reduced flexibility in the Bureau's ability to respond to demographic, programmatic and economic situations.
  - The language in P.L. 100-297 providing statutory recognition and authorization for each BIA school. This bar to curtailment of a school without either express permission from Congress or a formal request from the tribal council greatly reduces the ability of the Bureau to respond to changing demographic, programmatic and economic situations. The results of these restrictions will be the continued uneconomic operation of some facilities and the diversion of funds from programs with proven or potential success in improving educational services.
  - Regarding the establishment of new schools the Assistant Secretary - Indian Affairs, under P.L. 100-297, must base his decision "equally" on geographic proximity of public schools, geographic and demographic factors, the success of BIA and other school programs or potential programs, and the input of all parties. The instruction to give "equal weight" to subjective nonmeasurable factors sets up the BIA for charges of noncompliance to standards difficult to refute. Inordinate amounts of time, energy and resources will be spent in wrangling over definitions, equity and weighting factors that could better be spent on direct educational services to Indian students.

The real issue of providing quality education for Indian children, for whom the Bureau has responsibility, is often confused by concerns for sovereignty, tribal corporate rights, funding issues, employment and local control. There is rarely consensus, and often direct conflict among these objectives. To attempt to legislate a fixed set of actions that reduce flexibility and experimentation with new approaches complicates and guarantees a more ineffectual implementation of the Bureau's education program.

Senator DECONCINI. I'm one Member of Congress that has literally told the BIA don't close a school.

Mr. RAGSDALE. Yes, sir.

Senator DECONCINI. And obviously that caused great consternation and disagreement there. I accept my responsibility, and if there is an error it is an error in somebody's judgment, no question about it. But I think it is important to point out what that problem is.

This committee is not here, and our purpose is not to lay all the blame on somebody else. It is as much to lay the blame, or spread it around, if there is blame to be spread around—and there seems to be—to wherever it may fall, including the Congress and including this Senator, if that happens to be the case.

Let me review the policies that were implemented on reported sex crimes. Though there are no Federal laws, is it your best judgment that we ought to have a Federal law similar to what the States have in relating to reporting of sex crimes?

Mr. RAGSDALE. Yes, sir. I would agree with that.

Senator DECONCINI. And regarding the policy that the Bureau put out—I think it was 1987—do you know of any follow-up? First of all, were they implemented by anything other than the publishing of a memorandum or a stated policy?

Mr. RAGSDALE. Ms. Elbert and I have been doing the followup, and we will aggressively pursue that. But I must say, in all candor, I am disappointed with our personnel by not being more aggressive with regard to followup on these policies and checking for compliance and so forth.

Senator DECONCINI. What is the procedure for a policy? The BIA makes a policy. What does it do? Send a memo to every office and employee? What is the procedure, please?

Mr. RAGSDALE. It can be done by memoranda. The most accepted practice is to incorporate that into the Bureau of Indian Affairs Manual, commonly called the BIAM.

Senator DECONCINI. Now, has that been done with this policy?

Mr. RAGSDALE. No, sir; it has not.

Senator DECONCINI. So it, in essence, hasn't been implemented?

Mr. RAGSDALE. It has been implemented. We need to followup and change the subject memoranda to an addendum to the BIAM that would be incorporated into the manual bureauwide.

Senator DECONCINI. Just for explanation purpose, when is it considered a policy to be implemented? When it is in that manual or before? How do you look at it?

Mr. RAGSDALE. From a legal standpoint you are correct. It is supposed to be published in our rule or in our manual. But as the chief line officer—at least temporarily—in the Indian Bureau, if I give people an order I expect the orders to be followed, and if they don't follow them then they are insubordinate.

Senator DECONCINI. Even if it hasn't appeared in the manual?

Mr. RAGSDALE. Even if it hasn't appeared in the manual.

Senator DECONCINI. But, in essence, in fairness to any employees, if it isn't in the manual supposedly there is no way they would know about it, most of them.

Mr. RAGSDALE. That's correct technically.

Senator DeConcini. Now, let me just ask one other question. In the area of social services, the Division of Social Service has not had a permanent director since 1986; is that correct?

Mr. Ragsdale. That's correct, Mr. Chairman.

Senator DeConcini. And how do you explain this, Mr. Ragsdale, with the problems that you are aware of now and had some awareness of before, that division that is this important in the area of child sexual abuse cases does not to have the attention of the Director of the BIA and the Secretary and others to fill that position? Is there something here? Or is it just neglect?

Mr. Ragsdale. Well, I don't think it is neglect. With respect to the child protection team effort I'm—and I wouldn't say this unless I truly believed it—more than satisfied that the efforts that the Bureau has taken on in the last 1½ years with respect to the child protection team and getting these formed and doing the reviews and having the conferences and training and so forth have been very noteworthy.

I don't think that the social services field has suffered insofar as the child protection team effort because we have not had a permanent Director of Social Services.

We have hired the deputy within the last month, and he should be reporting on board very soon.

Senator DeConcini. The deputy to the permanent director?

Mr. Ragsdale. That's correct. And we have recruited, on a number of occasions, for the director position, but have not got the job filled at this point in time.

Senator DeConcini. Well, I have to say that is certainly an honest answer, but one that leaves me far from satisfied of the commitment to take this as seriously as I think you want to take it, and certainly we want to take it.

Let me just end by reiterating I think what Senator McCain already asked you. First, I agree with your letter of February 27 to Chairman Sidney. Am I correct that you also are sending one to the Cherokee Nation?

Mr. Ragsdale. My understanding is that we will be sending out about a dozen of these. I don't know that I will personally be able to go to every reservation, but Ms. Elbert and I have made the commitment for either one or the other of us to go and followup.

Senator DeConcini. As tragic as it is, no one can turn back what has occurred, but it takes a strong person to admit the mistake, and our government should do just what you did, and I thank you for doing that, even though it is a sad, sad situation.

Senator McCain asked whether or not the BIA was prepared to request or to extend or reprogram—I will add that "reprogram"—or what have you to provide funds for these various reservations and tribes for outreach and counseling and what have you, and, again, the answer to that?

Mr. Ragsdale. The answer is that we will do whatever is necessary, and if that includes—and we have, in reaction to these particularly difficult cases have done some of that already and will do more in the future.

I would like to say, Senator DeConcini—and I certainly appreciate your understanding and your gentleness with me thus far this afternoon—that in order for us to deal with this kind of problem that I suppose is a sign of the time that the dominant society is experiencing as well as the Indian society, that in order to deal with this kind of problem and prevent it from ever happening again it is going to have to be a people effort, and I tried to make that point in the letter that I wrote this weekend to the Hopi Chairman.

Now, the Bureau can and should provide some leadership. The Indian Health Service should, can, and I'm sure will, provide some leadership and funding. But somehow we have got to get the leadership of the effort overall down to the local community because it is only people who can help people.

Senator DECONCINI. Well, Mr. Ragsdale, your letter says that and I don't disagree with that. I think all of us have some responsibility here: those of us in Congress for not insisting on better accounting, for not insisting on knowing what is going on; the tribal leaders and the people for not demanding—and maybe they have and we are unaware of it—changes; and, of course, the BIA for what I consider its gross negligence.

But now is the time to look to the future. We can't change what has happened. We wish we could. But I think for these tragic instances it is imperative upon you to offer the necessary assistance. If it needs funds, I think it is incumbent upon you to come to us with reprogramming or special requests or whatever and lay the burden here because I think some of the testimony we received here where there was need for two or three additional counsellors on the Hopi Reservation, where they lacked the elementary kits of being able to communicate with young children that had been through this is something that is curable—not the whole problem, but the lack of these resources.

Mr. RAGSDALE. Yes, sir.

Senator DECONCINI. I hope that you will develop such a program and bring it to the appropriate committee. I can assure you of one ally to do everything humanly possible to get you the resources if, in fact, you don't have them.

Senator McCain.

Senator MCCAIN. I'd like to elaborate a bit on your comments. I fully support what you just had to say and, in fact, I think it is important that that message be sent to Mr. Ragsdale, as well as the rest of the employees of the BIA, and also in a broader sense.

In a lot of areas that have been and are going to be addressed by this committee we need your recommendations how to redress some of the problems that exist. I would encourage you and every other member of the BIA, or any of the other agencies that appear before this committee, but particularly the BIA, to provide us with recommendations as to how we can address these issues. We are open to your recommendations and your proposals and ideas.

Believe me, Mr. Ragsdale, there will be legislative recommendations made, and whether they are accepted or not will be up to the full committee and up to the entire Senate and Congress. But I know that Senator DeConcini and I will be making specific recommendations on a variety of issues that have come before this committee. It is our task and obligation to do so. We recommend strongly that you make whatever inputs and recommendations you may have. We would be more than happy to receive them.

Thank you, Mr. Chairman.

Mr. **Ragsdale**. Thank you. I assure you that you will have my honest recommendations as the committee proceeds.

Senator **McCain**. Thank you.

Senator **DeConcini**. Thank you, Mr. Ragsdale.

Do you have any further questions, Counsel?

Mr. **Ballen**. No, Mr. Chairman, Thank you very much.

Senator **DeConcini**. Thank you, Mr. Ragsdale.

Mr. **Ragsdale**. Thank you, Mr. Chairman.

Senator **DeConcini**. Mr. Dom Nessi, please come forward now. Mr. Nessi is the Director of Office of Indian Programs, Department of Housing and Urban Development.

[Witness sworn.]

Senator **DeConcini**. Mr. Ballen.

Mr. **Ballen**. Thank you very much, Mr. Chairman.

STATEMENT OF DOM NESSI, DIRECTOR, OFFICE OF INDIAN PROGRAMS, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ACCOMPANIED BY RICK BROWN, LEGISLATIVE AFFAIRS OFFICE

Mr. **Ballen**. Mr. Nessi, could you please state your full name for the record?

Mr. **Nessi**. Dominic Nessi.

Mr. **Ballen**. What is your position, sir?

Mr. **Nessi**. I am the Director of the Office of Indian Housing for the U.S. Department of Housing and Urban Development.

Mr. **Ballen**. And you are the responsible official for Indian housing across the country?

Mr. **Nessi**. Yes; I am.

Mr. **Ballen**. Mr. Nessi, you heard the testimony of Pat Ragsdale, the Director of the BIA, did you not?

Mr. **Nessi**. Yes; I did.

Mr. **Ballen**. I won't review with you in the same exhaustive detail what this committee has uncovered in terms of fronting in Indian housing contracts. I know that you have gotten our record and full transcripts in this matter and have had an opportunity to review that. Suffice it to say that we uncovered a massive problem in this area and massive evidence of fraud. What goes for the BIA in terms of those contractors, almost every single one of them was also a contractor in HUD.

Given that background, sir, I would like to ask you: is HUD aware of these problems of fronting and how pervasive they were until this committee came forward with its findings?

Mr. **Nessi**. No; they were not.

Mr. **Ballen**. Now, if they were not, how was it that this committee was aware of these findings but HUD was unable to uncover it?

Mr. **Nessi**. I think one of the problems has been that we have relied on the Indian Housing Authorities to implement Indian preference, and we have not followed up as carefully as we should have been as to their reviews of general contractors and contractors applying for the program.

Mr. **Ballen**. In fact, the Indian Housing Authorities don't have the kind of authority—the subpoena power and investigative authority—that the Inspector General at HUD would have or that this committee would have in investigating the background of Indian contractors or supposed Indian contractors. Would that be a fair statement?

Mr. NESSI. That's a fair statement.

Mr. BALLEN. Does HUD have the same—and rather charitably I would describe it as—"poor record" of disqualifying front companies that BIA has?

Mr. NESSI. It may not be as good as the BIA's record.

Mr. BALLEN. The BIA only disqualified 2 in the last 31 years. When you say it may not be as good, what do you mean?

Mr. NESSI. As far as I know we have not disqualified any companies.

Mr. BALLEN. You have not disqualified any companies?

Mr. NESSI. Right.

Mr. BALLEN. Sir, that leads me to the following question. Given this committee's findings, are HUD's enforcement implementation and regulations in this area adequate?

Mr. NESSI. No.

Mr. BALLEN. No; they are not. Has HUD come before the Congress to ask for some additional legislation? Or have new amendments been contemplated since you acknowledge that HUD's current regulations and enforcement are inadequate?

Mr. NESSI. I think I would go back to what we just said a few seconds ago, and that is that we didn't realize the extent of the problem until this committee met. Since reading the transcripts and watching the proceedings that have been going on here we have begun to formulate a number of things that we can do administratively that can, I think, begin to correct the situation.

Mr. BALLEN. Mr. Nessi, I just have this question to you: the committee has been investigating this area for 8 months and uncovered 19 companies that are questionable, at best. You say HUD wasn't aware of this, but hadn't HUD been administering this program for years?

Mr. NESSI. Well, we have been administering Indian housing programs since approximately 1965. Our Indian preference regulations began in the mid 1970s, and it has changed a number of times during that period.

Mr. BALLEN. Thank you very much, Mr. Nessi.

Mr. Chairman.

Senator DECONCINI. Mr. Nessi, I will put this as tactfully as I can. Do you feel some responsibility as the Director of Indian Housing Programs to look into certifications and, if you don't have the resources, to ask for the resources—and maybe you have—to question some of these contracts that may have been going on for years and years? I find it so difficult to accept, I'm sure, your very candid answer that you just didn't think anything was wrong until these hearings came along. You had no indications that there were any problems out there in Indian housing contracts or preference contracts?

Mr. NESSI. Sir, I have only recently come to the headquarters office. It has only been 4 months. Prior to that I was the Director of Indian Programs in the Denver office. We did have occasions where we were asked to review specific contractors. I think that, in retrospect, as I go back and look at the contractors that we did review, we should have more carefully applied the definitions of ownership to some of those contractors.

I think certainly as the Director of Indian Housing now I feel a tremendous responsibility to ensure that this doesn't continue.

Senator DECONCINI. And what are you doing administratively to see that change?

Mr. NESSI. One of the things that we are going to be doing tomorrow is to work with the Office of the Inspector General to put together an initial letter to go out to all Indian Housing Authorities to more carefully describe what our role should be and what their role should be in looking for Indian front organizations.

We have a training for all of HUD development staff on March 13 in Denver, and we have added a number of items to the agenda which will be dealing specifically with HUD review of documents that are coming in from Indian Housing Authorities. We will step up our field reviews in order to ascertain whether or not contractors are providing proper proof of ownership when they apply and propose a bid to an Indian housing authority.

I think we will start with those two steps and begin the spot checks, which I think will be very helpful.

Senator DECONCINI. Do you have the personnel to do that?

Mr. NESSI. Yes, sir; we do.

Senator DECONCINI. And the capacity to do that?

Mr. NESSI. Yes, sir; we do.

Senator DECONCINI. And exactly what are you proposing that you will do as to Indian preference contractors? What are you going to do for ones already out there?

Mr. NESSI. In terms of those who are currently executing in the middle of a contract right now?

Senator DECONCINI. Yes, sir. Right. What are you going to do?

Mr. NESSI. I think we would——

Senator DECONCINI. On a spot check basis, how are you going to do that?

Mr. NESSI. We would begin to look at the records that they have submitted to—if a particular Indian has submitted themselves as a major corporate owner we would like to see if he is actually on the project, if he is participating in the management of the project. If we find that he is not, or she is not, actively on the project each day we will ask them for more specific information as to how the profits for that project are being passed back to their shareholders.

If we find that there is truly a front organization out there we can cancel the contract, or ask the housing authority to do so.

Senator DECONCINI. And so how are you going to do it on new applications that are before you?

Mr. NESSI. On new applications what we will do is begin working with Indian Housing Authorities to provide them with some guidelines where they can apply more scrutiny to the documents that are being received from contractors.

I think one of the problems has been that once a contractor gets successful and wins a bid at one housing authority that other housing authorities don't review the paperwork as carefully because they believe that they have been certified. I think that is a problem that we need to work on with the housing authorities so that if you get unfairly certified at one place it is not perpetuated.

Senator DeConcini. Are you confident that the housing authorities, for the most part, run by the tribes can do this?

Mr. Nessi. Yes; I am.

Senator DeConcini. Senator McCain.

Senator McCain. Thank you, Mr. Chairman.

Will you be providing us with recommendations for legislative reform that need to be taken; is that right?

Mr. Nessi. Yes, sir.

Senator McCain. Do you have some in mind?

Mr. Nessi. At the moment I think most of my recommendations would be some of the administrative things that we can do at the department right now.

Senator McCain. Mr. Nessi, in your examination of problems associated with Indian housing, are you familiar with the Davis-Bacon requirement on construction of Indian housing?

Mr. Nessi. Yes, sir.

Senator McCain. Do you have any idea how much additional cost is added to the construction of a home on an Indian reservation as a result of complying with the so-called "Davis-Bacon" requirements?

Mr. Nessi. We have not made a study that would specifically show those figures. No, sir.

Senator McCain. Off the top of your head do you have any idea as to how much this impacts Indian housing?

Mr. Nessi. No; I don't.

Senator McCain. I have heard from tribal authorities that Davis-Bacon sometimes adds as much as 20 percent to the cost of a home. Have you ever heard anything similar?

Mr. Nessi. Yes, sir; I have. I understand that the department has attempted in the past, with the Department of Labor, to have HUD projects exempted from Davis-Bacon requirements, but they have been unsuccessful in that attempt.

Senator McCain. In your previous position out in Denver were you responsible for letting contracts for Indian housing?

Mr. Nessi. Well, we monitor the Indian housing authorities.

Senator McCain. And you noted the Davis-Bacon requirements?

Mr. Nessi. Yes, sir.

Senator McCain. And did you see that those requirements added to the cost of the home over what it otherwise might have been?

Mr. Nessi. I believe it does add to the cost of the home.

Senator McCain. Would you do me a favor and provide us in writing what the estimates are as to the additional cost when compliance with the so-called Davis-Bacon is mandatory, as it is today?

For your information, a few years ago I sought to give the tribes exemption from the so-called Davis-Bacon requirements if the tribe requested it. I was singularly unsuccessful in the effort. But I think if we are going to provide the Native Americans with the maximum amount of home for the dollar we ought to look at the wishes of the tribe as to how those homes are constructed.

Perhaps the panel of Indian leaders that is coming up next might give us some insight on that issue.

Mr. Nessi, one of the problems we run into all the time is that we always have someone new in the position. I understand, of course, that this is the nature of bureaucracies. But we are going to have to have some continuity. We are going to have to have some specific programs and some specific goals that you are going to have to implement, even if you are there for a very short period of time. I hope you will do so. I don't believe that Senator DeConcini and I are going to allow the Locust Syndrome to prevail here. That is, we are not going to let these issues die for the next 17 years.

At the same time, we are aware that without the full fledged cooperation and assistance of people like yourself we are not going to be successful. So I hope you will make a commitment to this committee that you will provide us with your best recommendations, even if it may be at some cost—although I don't see how that would be—to yourself. Will you do that?

Mr. Nessi. Yes, I will.

Senator McCain. Thank you, Mr. Chairman.

Senator DeConcini. Thank you, Senator McCain.

Thank you, Mr. Nessi. That's all the questions we have.

Mr. Nessi. Thank you.

[Prepared statement of Mr. Nessi appears in appendix.]

Senator DeConcini. Our next witness will be Doctor Vanderwagen, Director, Division of Clinical Prevention Services, Indian Health Service.

[Witness sworn.]

Senator DeConcini. Ms. Soller.

Ms. Soller. Thank you.

STATEMENT OF DR. CRAIG VANDERWAGEN, DIRECTOR, DIVISION OF CLINICAL PREVENTION SERVICES, INDIAN HEALTH SERVICE, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. Soller. Dr. Vanderwagen, there are two divisions within IHS that are responsible for the provision of services to child abuse victims; isn't that right?

Dr. Vanderwagen. The Division of Clinical and Prevention Services has within it Maternal and Child Health Services, and it also has Mental Health Services. Both of these activities have interest and involvement with child protection teams and services.

Ms. Soller. And the Maternal Child Health Division is the one that is primarily responsible for the provision of medical services and the conducting of medical exams on children for which abuse has been alleged; isn't that right?

Dr. Vanderwagen. That's true.

Ms. Soller. Have you heard in your position that there have been reports from the field that medical exams are, in some places, not being completely done or not being done at all when a child presents an allegation that it has been abused?

Dr. Vanderwagen. I have heard that there are various cases or occasions when that has occurred.

Ms. Soller. Can you think of a reason why that could happen?

Dr. Vanderwagen. I think there are two reasons: one is inadequate training on the part of the provider, because not every provider in every location is well-trained in this area; the second thing that comes to mind is that a very busy provider or pediatrician, who is the qualified individual to provide the service, may have other conflicting demands placed on them. They may indicate they can't do it at the moment and it appears to be insensitive and uncommunicative with the patient.

Ms. SOLLER. On most of the areas where IHS doctors are stationed there is no alternative but the IHS doctor; isn't that right?

Dr. VANDERWAGEN. That's true.

Ms. SOLLER. So, if a child is denied an exam or if an exam is delayed, is there any alternative in the area to which they could go in most cases?

Dr. VANDERWAGEN. If they are unable to do it on site, because of lack of skilled personnel to perform such an exam, certainly the referral of such a child to a qualified individual under the contract health service provisions of Indian Health Services is warranted. In fact, this kind of problem has been identified as a category I eligible medical emergency; that is, highest priority group for care under contract health services.

Ms. SOLLER. And what is IHS currently doing to try to make sure that no child for which abuse has been alleged is denied an exam?

Dr. VANDERWAGEN. I think that it is a two-fold activity: one is to educate the staff that, in fact, this is a responsibility—it has been part of our manual since July 1985 that that is a clear responsibility—and educate staff to that reality in the first case; second, to educate them about the skills necessary to perform such exams and to provide them with formats for doing said exams to assure that they are admissable evidence in a court hearing; and, last, where necessary that they be required to refer that individual and that they assure they are eligible for contract health coverage insofar as resources are available.

Ms. SOLLER. Now, in the *Hopi* case, where there were allegations that 142 children had been abused, do you know how many of those children received physical exams by IHS?

Dr. VANDERWAGEN. I can't answer that direct number. I know that there are in excess of 30 families that are in counselling, and I presume that all the children involved in those families have had some form of medical examination.

I know there are an additional 30-plus families waiting service. I'm not sure whether those folks have had exams or not.

Ms. SOLLER. Do you feel that it would be appropriate in a case such as Hopi or Cherokee, where it is revealed that a large number of victims are involved, that IHS could in some way reach out or make available physical exams immediately for the victims of the abuse?

Dr. VANDERWAGEN. I do.

Ms. SOLLER. The mandate for the provision of mental health services is within IHS; isn't that right?

Dr. VANDERWAGEN. Yes, ma'am.

Ms. SOLLER. And, to your knowledge, is there a similar provision for mental health services given to BIA?

Dr. VANDERWAGEN. Under child protective services section in the Code of Federal Regulations, as I understand it, there are explicit requirements of BIA, but it is a joint activity. They have some activities and responsibilities; we have others. It has to be done collaboratively.

Ms. SOLLER. But for mental health services does that lie solely with IHS?

Dr. VANDERWAGEN. That is an area that is not fully clear because mental health services is a wide area of activity from acute, short-term care all the way out to chronic, long-term care for chronically depressed or schizophrenic individuals, and that has been a matter of some discussion. I don't think it is fully clear in either organization how those are resolved.

Ms. SOLLER. Now, the current budget and the budget for the last several years that IHS has for all mental health services is about $13 million; is that right?

Dr. VANDERWAGEN. That's correct.

Ms. SOLLER. Have you found, in your experience, that $13 million is sufficient to provide the kind of in-depth therapy that the number of child abuse victims that are coming to light need?

Dr. VANDERWAGEN. Well, I can tell you that certainly one estimate that has evolved out of one community that has experienced such a trauma is that a 5-year estimate of cost for mental health services in that community is in excess of $2 million to $2.5 million to $3 million now. Obviously a $13 million is not going to allow for $2 million to $3 million to be provided to each community to redress those kinds of issues.

Ms. SOLLER. And the $13 million that you have now provides approximately one to two actual care providers in each area; isn't that right?

Dr. VANDERWAGEN. In each service community—service unit would be the designation we give—but one to two to each community.

Ms. SOLLER. And, in fact, IHS has come up with at least one estimate of its unmet mental health needs that would virtually double the budget; isn't that right?

Dr. VANDERWAGEN. That's correct.

Ms. SOLLER. And that unmet need has been targeted as an additional $12 million; isn't that right?

Dr. VANDERWAGEN. That's true.

Ms. SOLLER. Under the current system, though, with just the $13 million, isn't it true that IHS will not pay for mental health services until every other source of funding has been exhausted?

Dr. VANDERWAGEN. Counselor, the concept is true that we solicit and seek all alternative resources possible, but generally we will refer individuals for contract health care and then seek the third party coverage where it is available. I think that applies generally to mental health as well as it does for acute coronary bypass surgery or any other contract referral.

I think medically the provider at the field level is faced with a very difficult task of knowing a medical need and being faced with these kind of choices about financing. Generally the physicians will try to refer and then seek third-party coverage.

Ms. SOLLER. In a case, though, where a child is on a reservation and BIA and IHS both have facilities there, have you heard indications from the field that it is difficult for the service providers sometimes to actually get cooperation between these two agencies as to who is going to pay for it?

Dr. VANDERWAGEN. Very definitely. In my practice experience prior to coming to Washington I experienced that, as well. I know that recently a number of physicians have indicated that to us, and I think to others, as well.

Ms. SOLLER. And this uncertainty results in delays in treatment; isn't that right?

Dr. VANDERWAGEN. In some cases that is true.

Ms. SOLLER. The committee heard testimony of one social worker who mentioned a case in which a juvenile sex offender was placed in residential care for 10 days, that while in the hospital the hospital authorities indicated that the child was still suicidal and homicidal and was reporting that when he was returned to the community he would re-abuse the young female children that he had abused before he was hospitalized, and that this social worker was informed that if the tribal social services could not pay for the treatment the child would just be returned to the community.

In your opinion, is that a medically appropriate thing to do with that child?

Dr. VANDERWAGEN. Professionally that doesn't sound like an appropriate way to treat this situation.

Ms. SOLLER. What can be done in a case like that currently?

Dr. VANDERWAGEN. I think there are areas of clarification. Earlier I heard the Senators and the Counsel ask if there are things that would be useful for them to know. I think one of the issues that would be helpful would be clarification of the responsibilities perhaps in this area. That would, at the ground level where the patients live and the providers work, take away some of these Solomonic decisions that I think our providers in the emergency room and elsewhere are faced with. That's my thought about that.

Ms. SOLLER. Without some clear division do you think the system is actually working in the field today?

Dr. VANDERWAGEN. I would have to say there are a significant number of breakdowns. However, I think that on a day-to-day basis many people do get the care that they need. But there are clearly holes. There are clearly gaps that are unfilled.

Ms. SOLLER. Currently, as we have heard testimony, there is a reporting policy that BIA has which, as Mr. Ragsdale conceded, may not be working to its fullest effect. From what you have heard in the field, is the reporting policy that IHS has functioning any better?

Dr. VANDERWAGEN. We require specifically that providers report child abuse to the appropriate authorities. The difficulty for a provider in that case is: who are the identifiable authorities to whom he should or should not report?

I think that is where providers feel the concern. It is not clear, necessarily, to them who the primary person you report to should be. Is it a social worker? Is it the justice system at the tribal level? Is it the justice system at the Federal level? Is it the justice system at the State level? I think those are the confusing points around data reporting that our providers perceive.

Ms. SOLLER. At a recent forum that was held by IHS, are you aware that there were reports from IHS personnel in the field that in some cases they did not know what the protocols were, there was double reporting, there were gaps in the reporting, and that there was no communication between the reporting systems that BIA and IHS have?

Dr. VANDERWAGEN. I have talked to those individuals who attended the forum, and I have certainly heard that from other individuals. That is not a unique problem to child protection reporting.

I think as our providers turn over—and I think you may be aware that many of our providers come for a 2- or 3- year stint and they turn over. I think it is at the end of that second or third year that they begin to discover where those reporting schemes may be, but by then they are on their way out the door.

So I am not surprised that many of our providers aren't sure who they should report to, where they get the information back, et cetera.

Obviously it demands a training program in terms of identifying for these folks more specifically on locations how they should report, to whom, and where they can get the data and information back.

Ms. SOLLER. Well, if the reporting system is so flawed, how can there be any confidence at all in the statistics that the agencies put out on the number of reported cases of child abuse?

Dr. VANDERWAGEN. It is difficult to have a high degree of confidence for those numbers. Where they enter into our ambulatory patient care system I think we have a high degree of confidence in those, but where they are reported back out through other systems there is some questionable validity to the statistics.

Ms. SOLLER. Now, we have also heard during testimony here that there is difficulty in receiving information in some cases from IHS providers. Specifically, we heard one judge, a tribal judge, say that he had referred a case, himself, to IHS in a case of alleged abuse, and when he tried to get the results he was denied it citing the technicalities of the Privacy Act. How can IHS allow something like that to stand in the way of the provision of treatment and services for an abuse victim?

Dr. VANDERWAGEN. Some providers—I think overzealously, perhaps—guard the confidentiality of patient information. It is one of the things that we are focusing on in a Manual revision. Senator DeConcini questioned Mr. Ragsdale earlier about how you make a policy. Our Manual is the divine—if you will—word. One of the things that we are doing is modifying that Manual to provide direction to people on how and when the Privacy Act can and should be invoked more directly.

We have begun this process in the last year by training the area Privacy Act coordinators more effectively on the limits of that, as well.

Ms. SOLLER. Do you think that policy change is going to be enough, or do you think there needs to be a change in Federal law?

Dr. VANDERWAGEN. I don't know that I can answer that, counsellor.

Ms. SOLLER. With the current budget that you have of $13 million for mental health and the current number of service providers in the field, do you think that IHS is, right now, adequately able to deal with the physical and mental treatment needs of sex abuse victims?

Dr. VANDERWAGEN. I have to answer that question no. There are more demands than capability to respond at this moment.

Ms. SOLLER. Doctor Vanderwagen, you also did submit a statement in advance. Would you like to adopt that statement and have it included in the record?

Dr. VANDERWAGEN. Yes; I would.

Senator DECONCINI. Without objection, Dr. Vanderwagen's prepared statement will appear in the record.

[Prepared statement of Dr. Vanderwagen appears in appendix.]

Ms. SOLLER. Mr. Chairman, I have no further questions.

Senator DECONCINI. Senator McCain.

Senator MCCAIN. Dr. Vanderwagen, you said that you are not sufficiently funded to handle the situations as they exist today; is that correct?

Dr. VANDERWAGEN. That's true.

Senator MCCAIN. Could you give us an estimate as to how much additional funding would be required?

Dr. VANDERWAGEN. We have submitted, through the departmental budget enhancement process, a request for a specified amount. In the overall budget discussions within the department that request was deemed inappropriate. But we recommended, in this case, that an approximate $12 million increase in mental health was what the professional assessment was of the minimal need to——

Senator MCCAIN. Roughly double the present funding?

Dr. VANDERWAGEN. That's true.

Senator MCCAIN. I don't know if you are allowed to do it or not, but if it is possible would you submit to the committee a copy of that recommendation? Or is that deemed internal?

Dr. VANDERWAGEN. I can, sir.

[The information to be supplied follows:]

ANSWERS

McCAIN QUESTIONS

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1. What was the rationale that convinced the IHS that the Child Protection Teams (CPT) were the best approach? What type of consultation took place with tribes concerning CPTs?

Children in need of child protection services require the services and expertise of a variety of professional disciplines. Their needs often require funding resources from more than one organization. The CPT is an entity designed to identify, focus, coordinate and document the services and resources that usually are scattered among various organizations. The name of the entity is unimportant; the function is necessary if abused and neglected children are to be effectively served.

The IHS is responsible to establish guidelines for its health professionals to follow in meeting their responsibilities for abused and neglected children. The concept of the CPT is therefore outlined in the IHS professional services manual and in the Memorandum of Agreement (April 1987) with the BIA. Involvement of tribal groups in establishing functional CPTs that respect unique and cultural needs is critically important and must take place at the local level.

2. What type of training do CPTs receive?

The CPT members are selected because of their involvement with child abuse and neglect (CA/N) and child sexual abuse (CSA) and their professional training and experience. Professionals faced with CA/N and CSA cases need to seek out training that is specific to their profession. The IHS does not have specialized training available within its organization and therefore must rely on training centers and special courses that are available throughout the country. The CPT as a team should obtain training to function effectively as an interagency/multidisciplinary group. The CPTs are encouraged to arrange local workshops and to review training video-tapes designed to meet their training needs.

Training of the professionals who provide services to abused and neglected children is an ongoing need and is particularly important because of staff turnover, remote location of many of our staff and the press of daily service demands.

3. The IHS testimony indicated that the interagency committee has been an important focus for the BIA and the IHS to consolidate their interactions on child abuse and neglect. This seems to suggest that there may have been areas where services overlapped. Could you provide the Committee with some examples, if any?

There may be occasional overlap of social services at the Agency/Service Unit levels, since each agency has separate but related social services activities. One of the functions of the local CPT is to identify and correct these potential duplications.

We believe the most important function of the Oversight Committee on Child Protection is to establish the framework for close coordination of services. The scopes of IHS and BIA child protection services are quite different. Effective child protection requires an efficient exchange of information between organizations and disciplines, an established sequence of interventions and a timely completion of the various activities.

4. The IHS statement mentions ongoing consultations with the American Academy of Pediatrics in developing policy. Are there any other professional organizations that the IHS consults with in the development of policy? What type of consultation occurs with the tribes?

In regard to policy on CA/N and CSA, the American Academy of Pediatrics Advisory Subcommittee on Indian Health is our source of consultation. This Subcommittee is currently reviewing Maternal and Child Health policy revisions which includes sections on CA/N and CSA. We believe that it is important to apply nationally accepted standards to IHS policies. American Indian and Alaska Native children who are victims of CA/N and CSA must receive care under the same standards that apply to children in general.

Since every IHS Service Unit is uniquely and culturally different, the application of the IHS policy and the development of procedures must be locally generated with careful tribal involvement and consultation. The best interests of children will be served when local CPTs, with Tribal, BIA, IHS and State representation, take the responsibility to develop procedures for child protection services.

5. The testimony mentions that treatment responsibilities rest with the Mental Health Branch. What does the treatment program consist of?

Treatment of psychological difficulties of victims of child abuse and neglect is provided by local service unit or tribal mental health programs to the extent that resources allow. The current IHS categorical mental health budget of $13,091 million allows an average of two mental health treatment staff for each of the 127 service unit locations. The usual treatment program staff consists of a full time clinical psychologist or social worker and a trained mental health technician, who is a member of the local tribal community. The services provided are primarily for acute emotional crisis. Longer term outpatient counseling is available when time permits. Short-term acute inpatient care is provided on contract with available hospitals. State mental hospitals provide long-term inpatient care when needed. In one state, state mental hospital (SMH) care must be reimbursed to the state by IHS. Physical health/medical services to victims of child abuse are provided by staff of IHS and tribal health centers and clinics.

6. What coordination takes place with the BIA with respect to treatment?

Coordination of IHS treatment with BIA services does occur in almost all service units. The nature of the collaboration depends on the needs of the abused child and the family. The CPT serves as a useful vehicle for coordination of IHS and BIA service programs.

7. What professional resources are available to tribes from the IHS - Psychiatrists, Psychologists, and family counselors?

As of September 30, 1987, IHS employed 216 mental health treatment staff, including 24 psychiatrists, 47 psychologists, 61 social workers, 66 mental health technicians, and 18 members of other clinical disciplines. Approximately 40-50 mental health treatment staff are employed by tribal "638" contracts. (See also the answer to Question 5.)

8. Your testimony makes no mention of working with tribal social services, courts or law enforcement agencies. Please describe your efforts to work directly with Tribal governments.

The IHS professionals who provide child protection services in the IHS Areas and Service Units are expected to work closely with tribal child protection professionals and services and with tribal government officials as necessary and desirable. This interaction varies considerably from Area to Area and Service Unit to Service Unit. In many situations, this interaction is efficient and effective and in other situations much improvement is needed. As trust among members of CPTs is increased, the effectiveness of the needed interaction of services will improve.

9. What is the IHS policy regarding the authorizations of contract care dollars for a physical examination in a suspected child abuse case?

Contract care dollars can be used for examinations in cases of alleged abuse in which medical assessment and/or collection of medical-legal evidence is needed, or when qualified IHS professionals are unavailable.

10. What is Service's opinion of the Child Protective Services Training Academy developed by the Intertribal Council of Arizona?

To date our assessment of the Training Academy's program in Child Protective Services is positive. Workers who have been trained by the program have given it high marks. It is our experience that training programs such as those of the Academy that are able to relate accepted principles of management of child protection services to local needs and characteristics are usually effective. The IHS plans to study the Academy's program in more detail with regard to its utility for IHS program staff.

11. The BIA testimony stated that the national oversight committee would be reviewing the effectiveness of the CPT program. Is the IHS waiting on this report before proceeding with the two study proposals mentioned in the Department's testimony?

One of the responsibilities of the Oversight Committee is to conduct ongoing Area reviews of Area CPT activities. There are several objectives for the reviews:

a. to review compliance with policies outlined in the BIA-IHS MOA and IHS policies on CA/N and CSA,
b. to identify successful program activities,
c. to identify unsuccessful program activities,
d. to document effectiveness, and
e. to identify needs in the Area that require more Central Office and Headquarters involvement.

These reviews are intended to give field input to the BIA and IHS Washington offices and to enhance Washington's responsiveness to the field.

The two study proposals are to generate a data set that can be analyzed and then used to establish more rational child protection program plans. The studies will be designed to answer a number of questions related to CA/N. The questions to be answered by one study include:

a. What is the scope (prevalence, incidence etc.) of the problem?
b. Are the procedures for reporting suspected cases adequate?
c. Are the definitions of CA/N and CSA consistent?
d. Is the current documentation providing reliable incidence data?
e. What protocols and procedures exist for IHS staff to follow in giving examinations and collecting evidence?
f. What training is being provided currently to new and existing IHS staff?
g. What prevention programs are now in place?
h. Are referrals being consistently and appropriately handled by the IHS?
i. What coordination procedures to interact with other child protection agencies are in place?
j. How can the IHS improve its effectiveness in its role in providing child protection services?

The questions to be answered by the second study include,

a. What is the long term effect of child abuse on Indian communities?
b. What are the socio-economic factors in Indian communities that contribute to CA/N and CSA?
c. Are the long term objectives of the IHS adequately addressing these risk factors.
d. What procedures are necessary to identify high risk families?
e. What is the correlation of child abuse and substance abuse in Indian communities?
f. What is required to develop effective education programs for Indian leaders and communities?
g. How can the effectiveness of model programs be established and replicated?

The oversight committee reviews and the two studies will occur at the same time. Conducting the studies is not dependent on the outcome of the Oversight Committee reviews.

12. The IHS testimony states that a national three member team has been developed to "provide consultation to tribes and service units on the prevention of family violence, including child abuse and neglect." What is included in this consultation process? Is this process initiated at the request of a tribe? Does the IHS plan to expand this national team? Is this team solely involved in prevention- what about treatment?

This Special Initiatives team is located in the IHS Headquarters-West office in Albuquerque. Please see the attached Team statement, which describes its services. The Team members themselves do not provide treatment services, but their consultations do address treatment issues. It is anticipated that one additional Team member will be hired in the near future.

Dr. **Vanderwagen**. I think it has been submitted to the Appropriations Committee already.

Senator **McCain**. Thank you.

Just one more question. Has there been a commitment by IHS to provide money to address the ongoing problem of lack of child-abuse counselling on the Hopi Reservation?

Dr. **Vanderwagen**. At this time we haven't been able to identify additional funds to put to that issue. We have tried to augment with technical assistance and to advocate within the Department of Health and Human Services for a reauthorization of a grant that the community received last year, and that is what we have been able to do at this point, sir.

Senator **McCain**. Let me get this straight. You have supported a re-authorization of a previous grant?

Dr. **Vanderwagen**. The community received $100,000 last year from the Department of Health and Human Services, and we are very supportive of re-authorization of that grant, if possible.

Senator **McCain**. And that is under what Department?

Dr. **Vanderwagen**. I think that is under Human Development Services.

Senator **McCain**. But there is a specific area—Families and—

Dr. **Vanderwagen**. Administration on Children, Youth, and Families.

Senator **McCain**. And so the committee should request additional funding from that Agency?

Dr. **Vanderwagen**. Yes, sir.

Senator **McCain**. But there will be more required than $100,000 in your view? And if we get $100,000 in the shortterm, that would take care of the short-term problem while we are securing additional funding?

Dr. **Vanderwagen**. In addition to that, the tribe has contracted for a mental health program from the Indian Health Service which provides some staffing support within the community that, while they have other issues to address other than this particular trauma, they are available, as well.

Senator **McCain**. Would you provide the committee please with your estimate of what additional funding the tribe would need? And also what the Cherokee Tribe needs, as well.

[Information to be supplied follows:]

DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Indian Health Service
Rockville MD 20857

JUN 1 1989

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The Honorable Dennis DeConcini
Chairman, Investigations Subcommittee of the Senate
Select Committee on Indian Affairs
Senate Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator DeConcini:

I am responding to the question which you asked of Dr. Craig Vanderwagen, of my staff, regarding what additional funding would be needed for the Hopi Tribe and Eastern Band of Cherokees to adequately deal with the child abuse problems.

The Indian Health Service (IHS) is required both by statute (the Indian Health Care Improvement Act of 1988) and by court order (the Rincon decision, 1980) to provide services to all tribes in an equitable manner. Unfortunately, many tribes are now faced with the serious problems of child physical and sexual abuse and neglect. Therefore, in the absence of significantly increased resources which could be used to assist all affected tribes, we could not recommend increased funding for mental health, medical, social or other child abuse services to any one specific tribe.

If such additional resources were available, the Hopi Tribe and the Eastern Band of Cherokees needs for treatment of child abuse would be targeted for assistance based on the following assumptions:

1. Ten percent of the population has experienced some form of current or past child abuse and neglect, including abuses in schools.
2. Fifty percent of these persons need and will seek mental health and related services for these abuses per year.
3. One year of service is required for each person/family seeking service.
4. One mental health staff person can provide services to 20 individuals/families per year.

Based on these assumptions, and an average mental health professional salary of $35,000, about $385,000 per year would be required for the Hopi Tribe, and about $875,000 per year for the Eastern Band of Cherokees.

If additional resources were made available to IHS for mental health treatment of victims of child abuse, some of these resources would be available to the Hopi Tribe and the Eastern Band of Cherokees. However, the funds would need to be divided among most of the 127 service units to deal with the child abuse problem.

If you have further questions, please feel free to contact me.

Sincerely yours,

Everett R. Rhoades, M.D.
Assistant Surgeon General
Director

Senator McCAIN. Thank you, Mr. Chairman.

Senator DECONCINI. Thank you.

I have no questions, Doctor. Thank you for your testimony. I think it is helpful to us. We may come back with some further questions that I yet want to develop for our final conclusions as to what we do. I believe we asked if you will give us the recommendations you think are helpful in being able to provide the necessary services, even if it is more money, which sometimes is easy to say and hard to do, but other corrective areas would be helpful.

Dr. VANDERWAGEN. Anything we can do to assist, we will be happy to attempt to do.

Senator DECONCINI. Thank you, Doctor.

Our next witnesses will be: Ivan Sidney, Chairman of the Hopi Tribe; John Taylor, Chief, Eastern Band of Cherokee, North Carolina; and John Washakie, Chief, Shoshone and Arapaho Tribes.

[Panel sworn.]

Senator McCAIN. Mr. Chairman, while the witnesses are being seated could I ask unanimous consent that the record remain open for 30 days to allow tribes and other interested parties to submit comments and testimony?

Senator DECONCINI. Thank you. You certainly can.

Let me just state for the record that we welcome the testimony of all of you here. Your full statements will be put in the record, although you may read what parts you want. Particularly we welcome the testimony of John Washakie, Chairman of the Shoshone Tribe, Wind River Reservation in Wyoming.

In a recent letter to the special committee, Wesley Martel, the Chairman of the Wind River Environmental Quality Commission, urged that the main select committee review environmental issues in oversight hearings. We understand that the select committee will conduct an oversight hearing on environmental issues this spring—I believe the middle of May or close to it—and we support those hearings. This letter from Wesley Martel, Chairman, Wind River Environmental Quality Commission, will be made part of the record at this point.

[The Martel letter appears in appendix.]

Senator DECONCINI. Gentlemen, we welcome you here. We look forward to your testimony and, later in the spring, any information that you may want to bring to our attention.

I want to particularly welcome Mr. Sidney, Chairman of the Hopi Tribe, for his travelling far, as well as the other chairmen.

We will start with you, Mr. Sidney.

STATEMENT OF IVAN L. SIDNEY, CHAIRMAN, HOPI TRIBE, KEAM'S CANYON, AZ

Mr. SIDNEY. Thank you, Mr. Chairman.

Mr. Chairman, distinguished members of the Special Investigations Committee, as Chairman of the Hopi Tribe, let me thank you for the privilege of testifying this afternoon. Speaking for the Hopi Tribe, let me assure you that your special committee efforts are deeply appreciated.

Needless to say, the Hopi Tribe cherishes sovereignty and eagerly embraces the concept of self-determination. We also recognize that we do not exercise our sovereign powers in a vacuum. The Federal Government's trust responsibility remains a real and important element in our contemporary life. In that regard, you may be assured that we look to the Congress as the ultimate trustee in this relationship.

Historically, the Federal Government has abrogated its trust responsibility at virtually all levels. I would concur with Senator McCain's characterization of past Federal Indian policy as one of "benign neglect." Indian affairs issues have too often been assigned a secondary priority status in the execution and management of Federal programs, in the funding of such programs, and in the policy deliberations of the Congress, itself. "Oversight" has been akin not to "overseeing," but rather to "overlooking" pressing Indian issues and problems.

The work of this special committee is a most positive step toward rectifying this past circumstance. You have plunged into a range of important, and, indeed, sensitive issues that cry out for oversight attention. I applaud that effort as one worthy of your trust responsibility, and the Hopi people wish you well in concluding the balance of your work.

This afternoon I would like to share certain thoughts on the issues of tribal corruption, contracting on Indian lands, the adequacy of our Federal representation, and child sexual abuse—all matters on which you have heard testimony to date.

With regard to tribal corruption, allow me to make several points briefly. First, I would suggest that nothing undermines meaningful self-determination, in both perception and fact, more quickly than corruption and mismanagement by tribal leadership, a tragic circumstance which is, thankfully, an exception to the rule.

All of us privileged to serve in a leadership capacity have a special responsibility to discharge our duties and lead our people with the utmost integrity. The failure to do so rightfully deserves the condemnation and wrath of those who have elected us. In this context, tribal corruption is purely a tribal matter—best dealt with by the tribe, itself.

On the other hand, where that corruption—whether bribery, kickbacks, or other exploitations of our people—involves the complicity or acquiescence of Federal agencies charged with supporting and assisting tribal governments, the matter is very much appropriately the concern of the Congress.

We thank the committee for efforts to identify and redress fraud and corruption in Federal Indian programs where it is found to exist.

The Hopi Tribe is, likewise, appreciative of attention given to the issue of contracting on Indian lands. Regrettably, despite its good intentions and flashes of promise, the Buy Indian Act too often has benefited clever schemes to bilk Indians and the Federal Government out of funds and opportunities designed to assist genuine Indian-owned enterprises. Many abuses flow, I believe, from an inadequate statutory framework for implementation of the legislation and inadequate funding to support the act's intentions.

Suggestions for remedy include the following:

One, providing for contractor development and assistance. This includes bid preparation, negotiations and training so that new and existing Indian firms can become fully qualified to take advantage of opportunities.

Two, providing a centralized certification program to license and register legitimate Indian firms that might include criteria such as degree of Indian ownership, tribal enrollment requirements, distribution of profits standards, etc.

Three, finally and importantly, providing appropriated funds to support the program. For example, too often legitimate Indian enterprises on the reservation are unable to compete with outsiders for want of providing adequate performance bonds. Help is desperately needed in this area.

Regarding the adequacy of Indian representation, let me say that the track record of the United States Attorney, agency solicitors, and Federal agencies is at best uneven, ranging from excellent to poor. Too often Federal agencies and their attorneys are burdened by conflict of interest concerns that reduce the quality of representation below acceptable levels.

Problem areas include the following:

First, inadequate funding for private attorneys where the United States Attorney is prohibited from representing tribal interests due to a potential conflict.

Second, agencies outside the BIA fail to fully recognize and take into account their trust responsibilities in developing regulations, such as those developed pursuant to the Surface Mining Control and Reclamation Act.

Third, no guidelines exist to guide agencies and attorneys when program responsibilities conflict with the trust obligation owed to Indian tribes.

Fourth, BIA lacks the technical staff to carry out responsibilities delegated them by complex statutes, such as the Surface Mining Control and Reclamation Act.

Fifth, inadequate consultation by Federal attorneys attending to Indian matters.

Sixth, uneven prosecution of serious crimes in remote reservation locations.

Seventh, inattention by Federal agencies, such as OSM, in assisting tribes in developing the capacity to regulate their own environmental and economic affairs.

Finally, Mr. Chairman, allow me to address the issue of child sex abuse—an issue that is of special concern to the Hopi people. As you know, the Hopi Tribe suffered a tragic and traumatic experience in this regard at a BIA school on the Hopi Reservation.

I know the special committee has heard testimony of several courageous Hopi parents of children involved and from Doctor Eidell Wasserman, who has been so extraordinarily helpful to us, as well. Accordingly, I will not indulge the panel in a recitation of the horrors of our experience beyond the following few comments:

One, the BIA and Indian Health Service were not responsive to our dilemma, despite the fact 142 victims of one teacher were involved.

BIA school officials did not respond to the pleas of concerned parents, and have never been reprimanded for not doing so.

Both the BIA and IHS have expressed an ongoing reluctance to actively mobilize services for affected victims, arguing either that the Snyder Act precluded their involvement or disagreeing as to which agency had primary responsibility. Suffice it to say that, but for the active involvement of my office and the Hopi Tribal Council and the Victim Witness section of the United States Attorney's Office, no therapeutic services would have been available at all.

Two, funding for therapy programs has been inordinately slow and remains presently jeopardized. For example, a 4-month time period elapsed without services from either the BIA or IHS while the Hopi Tribe submitted a proposal requesting special funding.

It took another 8 months before funds could be identified to provide relief services, a gross injustice to the children and their families victimized at the BIA school.

Further, and of current critical alarm, despite urgent pleas to the BIA and IHS, there is, as of this moment, no funding available for continued therapy services beyond June of this year.

Few have been more attentive to this problem than has Senator McCain. I especially would like to thank him for his leadership relative to this difficult issue. And, Mr. Chairman, your remarks here today were most constructive and we would like to likewise express our appreciation to you.

I would also like to recommend that the special committee consider remedies that might include: a disciplinary procedure for BIA school officials who neglect to respond to allegations of abuse; a statutorily mandated procedure requiring current and prospective BIA teachers to disclose any history of child abuse incidents and a mechanism to ensure that such disclosures are screened at a responsible level and in a manner consistent with privacy concerns before any BIA teacher sets foot on any Indian reservation; a clarification of the right of sexually abused children at BIA schools, and their families, to bring an action in Federal court for damages arising from their injuries; and, finally, the establishment of an adequate federally-funded program to ensure the maintenance of a thorough, consistent, and complete therapy regime for Indian victims.

Mr. Chairman, in conclusion let me again thank you for the opportunity to appear before this special committee today. I know that much hard and important work lies ahead for the committee. Please be assured that the Hopi Tribe looks forward to cooperating with your ongoing efforts in any way we can.

Mr. Chairman, I also have four points that I would like to make before I conclude.

There has been tremendous discussion on Indian reservations regards to the present work of this committee in regard to tribal sovereignty.

I know that I am assured that this committee is not wanting to erode the continuation of us attaining our true tribal sovereignty. I hope that no further Federal policies will be developed to infringe on our sovereignty.

I heard testimony just prior to me I hope that the Federal agencies will take what has been uncovered in this hearing to work toward more of requiring responsibility of their employees rather than infringing on sovereignty. Again, I don't believe that the effort is to infringe on sovereignty but to assist us to gain 100 percent of our sovereignty and to build a good economy on our reservations.

Also, second point, I encourage Congress and the administration to work more closely with the tribal elected leadership. I believe that it is more of a true government- to-government relationship. I have seen in the past that national Indian organizations without a constituency have been more representative or spoke for Indian people, yet I would like to see the Congress and administration come to the reservation and see for themselves what you have revealed here, the conditions on reservations, and let us be responsible as elected leaders.

Third, let us look toward successful programs on Indian lands. There are tribal governments that are exemplary. Let us compound and build on successes. Yes, issues have been raised here, but let's look to the successes because Indians are best known to resolve their own problems. We are all native people, but we are divided by our culture.

The last remarks, Mr. Chairman: something that has been most appealing to me recently has been—I was looked at as a unique Indian elected leader when I was a delegate to the Republican Convention in August in New Orleans.

Senator DECONCINI. We forgive you for that, Mr.Sidney.

Mr. SIDNEY. Thank you, Mr. Chairman.

Senator MCCAIN. You did a helluva job. [Laughter.]

Mr. SIDNEY. Thank you.

This I say because I feel that the Indian people need to take advantage of both systems of this government, whether it be Democrats or Republicans. I view this here as two of our distinguished Arizona Senators taking such an effort to work in a bipartisan effort for seeing Indian people, the first people of this country, who have been less of a priority, and people wanting to help themselves.

What I'm trying to say, Mr. Chairman, is that I have advocated in that process which I explained earlier. My involvement was a Special Assistant to the President in the White House. The blacks have it, the hispanics have it; why not the Native people? I spoke of that and felt I had spoken to deaf ears. But now your letter you wrote to the President, we need that attention and, with respect to the Bureau of Indian Affairs you hopefully have their attention as well.

I have stated in the past that every assistant secretary in the Bureau of Indian Affairs assumes a bureaucracy—people protected by civil service. And, in certain respects, they feel they don't have to listen to the President of the United States.

So with this help and what you have done maybe the Hopi elders are best at saying that "the Indian people will come to the good thoughts of this country and will reap the best of the harvest, but in doing so we will undergo turmoil first." Maybe we are going through that storm, Mr. Chairman. We have to face the reality.

I don't believe it is the intention of self-appointed leaders and politically minded tribal chairman to continue this. The objective is for Indian people to have better lives, and I see this committee doing that. I commend all of you for the work you have done and I appreciate having the opportunity to come here and make these remarks.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Sidney appears in appendix.]

Senator DeConcini. Chairman Sidney, thank you. I thank you for the compliments on the working relationship of the two Senators from Arizona. I have been here going on 13 years. I have had many ranking members, and I have been the ranking member for 6 years on a number of committees that have dealt with non-partisan issues, and I have never had a better working relationship, and if it was possible to form a political party known as the "Special Committee on Investigations," a national party, I would be more than happy to join so with my friend from Arizona.

Chief Taylor.

STATEMENT OF JOHN TAYLOR, CHIEF, EASTERN BAND OF CHEROKEE, NORTH CAROLINA, ACCOMPANIED BY CLEO TAYLOR (WIFE)

Mr. Taylor. Mr. Chairman, I'd like to take this opportunity to thank you and this committee for allowing me to come up and give some of the thoughts of the tribe on some of the things you have been having hearings on for the past few days. Believe me, we have heard a lot about it down on the reservation.

I'm not going through my whole statement. I think you have got my written statement. I'd like to make that a part of the record, if you would, please.

Senator DeConcini. Your prepared statement will be inserted in the record immediately following your oral presentation.

Mr. Taylor. I would just like to touch on some of the things.

First of all, we are from the western part of North Carolina. We are right in the heart of the Great Smokey Mountain National Park. There are 10,000 members of our tribe with 6,918 living on the reservation. The average income for our people there at Cherokee for a family of six is about $7,000 to $9,000 a year. The unemployment rate is about 45 percent.

Our main industry in Cherokee on our reservation is tourism, and also timber sales and grants from the Federal Government—BIA, Indian Health Service, HUD housing, and right down the line, just like all the other tribes.

Some of the things that I have heard from witnesses before me sound like a different Bureau than what I am dealing with. I have been in politics now—I hate to say the word—for the past 20 years, and I have had to deal with BIA, IHS, HUD, and right down the line. Listening to witnesses before me, it just doesn't seem like the same people that I have been dealing with, especially with BIA.

I'm sure proud that the committee has taken it upon themselves to put child sex abuse as one of the main topics of your hearings. It is a tragedy that something like that had to happen at Cherokee and that it took 14 years for that man to be let go. And I think even when Mr. Anderson interviewed him he said that he felt that the school officials knew about it.

I know that he had been brought to the officials and brought right by the chief, himself, when he found out about the letter that came down to the school about why this man was let go. He went to the agency acting superintendent at that time, which was Robert Evans, and asked that this man be released. This didn't happen. They can't say they didn't know about it. I sat here and listened to witnesses say they didn't know about it.

Also I heard that the director of Indian Education here in Washington didn't know about it until these hearings started, and then he had to go dig up the record and try to find out something that he should have known about all the time.

I can appreciate and support the witnesses before me that would like to see legislation passed for the reporting systems in these BIA schools just the same as it is out in public schools—and not just for the schools, but for IHS hospitals. I think we have one of the two IHS-run hospitals in the Eastern area—the other one is at Choctaw—which I think is just a cop out when you say that they are here one day and gone the next. A lot of these doctors stay from 6 to 8 years at a time. They know the head of the law enforcement, they know we have social workers in the hospital itself. I don't think it would be too hard for them to go to some of these people about some of these things that are happening.

I also saw in the newspaper when I was up here a couple of weeks ago—I think the Washington Post ran an article that was sort of like that if this committee wasn't attacking the proper people they should be attacking, they were attacking tribal sovereignty. I don't see it like that, Mr. Chairman. They might call me a brainwashed person when I get back to the reservation, but I don't see it like that.

I think when things like sexual abuse, corruption—the other chief talked about that earlier—are brought to the attention of a committee like this and are acted on, I know you are not going to be the most popular people in the world when this thing is over, but at least I think if this thing is run right that we can all gain by it. I don't think you are attacking tribal sovereignty. I think you are even making it stronger.

I think that tribal, State, and Federal Government should be accountable, but it seems like it is just a one-way street. They say tribes are accountable, but where is BIA and IHS accountability? That's what we would like to know on the reservation.

I think it is time.

There is one thing I see bad with this whole operation, that it comes 20 years too late. It should have happened 20 years ago. Some of the people that have been hurt on my reservation and other people's reservations might not have been hurt if somebody would have taken it on themselves to say these situations should be examined and see what BIA was doing and see what IHS is doing. I don't think it hurts anything for anybody to go in and look around.

I tell you one thing: I bet they'll be looking at things differently now that they see that somebody is going to be looking over their shoulder every now and then.

HUD housing—I heard the people from HUD housing here a while ago in contracting. Now, I have heard some of the things that some of the gentlemen brought out a while ago about phony contractors. We found out at Cherokee—we asked that HUD let the tribe build our HUD houses ourselves on force account, and we have been able to build from eight to ten additional houses with the alloted funds. We also build better houses. We buy better materials.

When they draw up the plans and it calls for a certain wiring system to go in for the electricity, we even put a better system in, and better plumbing. We are building a better house for less money and building more houses because when you build them out there these contractors will come in, and when they see the U.S. Government sign on a bid they'll know about how much money is in that and they will bid right to the penny inevitably.

We asked HUD to let us do it on force account. We had to put up a CD of $200,000 to say if we go over the money this money is here to back the indebtedness that we might put HUD in. We have lost none of our money, Mr. Chairman. We have always built more houses and kept our CD intact and never had to spend it.

Senator DECONCINI. To explain the record, you have put up $200,000 in a trust fund? Exactly what did you do?

Mr. TAYLOR. The only way that they would let us build our houses was on a force account method.

Senator DECONCINI. Yes.

Mr. TAYLOR. We would put up $200,000 even——

Senator DECONCINI. Where would you put the money? With HUD?

Mr. TAYLOR. No; in the bank with like a CD that if we spent more than the alloted money in the contract that this $200,000 will be there to——

Senator DECONCINI. Would go to the government?

Mr. TAYLOR. Would go to the government.

Senator DECONCINI. And, of course, you have not had to do that.

Mr. TAYLOR. We have never had to do it. We have always built more houses and better houses.

Senator DECONCINI. Thank you.

Mr. TAYLOR. And I think that a lot of the tribes ought to do that.

Another thing, on Indian reservations what gets a lot of tribes in trouble: a few years ago Congress passed Public Law 93-638. They told BIA and the Indian Health Service to go out there and get these tribes to go into contracting. They pushed contracting on the Indian tribes, and, as you will see in my testimony here, I think sometimes that tribes contracted because it always put this—you've seen the little picture out there with this mule sitting down and then put the ear of corn out in front of him to make him get up? They use indirect cost dollars to get tribes to contract. That looked real good to tribes at that time, but a lot of times some of the tribes don't have the capability of managing these contracts and this work that they contract for and they are destined to get in trouble. BIA knows that and the Indian Health Service knows it.

But also in that same law they are supposed to provide money and technical assistance to see that those tribes don't fail, but this doesn't happen down on the Indian reservations.

Another thing is that everyone is always knocking the Congress for not appropriating enough money for Indians to run their programs on. I feel that the Congress appropriates enough money for the programs, but it just doesn't get down to the place it is supposed to go to. By the time it goes through the bureaucracy here in Washington—from OMB over to the central office, area office—by the time it gets down to the reservation we get about 50 percent of what Congress meant for us to have to run programs on.

A lot of times the money that we could use on our youth for youth recreation we have to put back into the Bureau to handle their trust responsibility. I think it is time that the Bureau of Indian Affairs and IHS get some of this accountability we have been talking about.

Mr. Chairman, I'm not going to bore you any longer. I'm glad that you would allow me to come up here and tell you some of my views. I hope that when this committee is through that we can come out with a report that Congress can live with and people on the reservation also can live with.

As Chief of the Eastern Band of Cherokee Indians, my people would like to thank you people for taking it on yourselves and your shoulders to try to get something done about sexual abuse, not only in the schools, but on the Indian reservations.

Thank you, Mr. Chairman, and this honorable committee.

[Prepared statement of Mr. Taylor appears in appendix.]

Senator DECONCINI. Thank you, Chief Taylor. I can assure you that the popularity of my colleagues and I has not risen as a result of this, nor was it ever intended to. But we still appreciate very much the thoughts of you and Mr. Sydney on our work.

Chief Washakie.

STATEMENT OF JOHN WASHAKIE, CHIEF, SHOSHONE AND ARAPAHO TRIBES, WIND RIVER RESERVATION, FORT WASHAKIE, WY

Mr. WASHAKIE. Mr. Chairman, my name is John Washakie, and I am the chairman of the Shoshone Tribe of the Wind River Reservation.

I want to express my appreciation to the committee for this opportunity to testify about issues which have come before the committee and which are of great concern to the Shoshone Tribe, as well as all of Indian country.

I have submitted formal, written testimony which addresses in detail the matters which I will be summarizing more briefly here.

I would like to discuss two major areas of concern: first,the Shoshone Tribe feels that, at the present time, overlapping Federal agency regulation and jurisdiction on Wind River Reservation is interfering with the effective management of tribal affairs; second, we remain concerned that the Bureau of Indian Affairs continues to act in ways which interfere with the tribe's exercise of self-government and self-determination.

In addressing each of these points I will attempt to give very specific examples of what I am talking about.

Let me turn first to the problems of overlapping Federal agency jurisdiction. For over three decades, underground injection for secondary oil and gas recovery, brine disposal, and hydrocarbon storage has been practiced on the Wind River Reservation. Through our Wind River Environmental Quality Commission, the Shoshone and Arapaho Tribes moved, in 1988, under the authority of the

1986 Amendments to the Safe Drinking Water Act, to undertake the establishment of a tribal underground injection control program.

As you may be aware, a number of Federal agencies in the past have had jurisdiction on the Wind River Reservation regarding underground injections. These have included: the U.S. Geological Survey, the Bureau of Land Management, the Bureau of Indian Affairs, and now the Environmental Protection Agency.

A number of problems have resulted from this patchwork of Federal regulation. First, as explained in more detail in my written submission, the BLM and the EPA, each armed with different standards and conditions for certain aspects of underground injection control, have been engaged in a jurisdictional turf battle.

Second, one of the EPA's first acts on the Wind River Reservation was to exempt from its control regulations portions of a number of our aquifers, all of which contain regions of potable ground water, an action we and our experts question.

Finally, we continue to experience unexplained delay in the processing of our application for EPA funds with which to commence the tribe's underground injection control program, even though our application has been pending for over 6 months.

My second example of the problems created by overlapping Federal agency jurisdiction involves the Bull Lake Reservoir on the Wind River Reservation. Here, overlapping jurisdiction has lead to serious conflicts and tension among the tribe, the Bureau of Reclamation, the Bureau of Indian Affairs, and non- Indian irrigators on the reservation.

The question which has created the conflict is, simply stated, whether in years of water shortage the Shoshone and Arapaho Tribes or non-Indian irrigators have a call on the water in that stream which is necessary to maintain the tribal fishery above and below the dam.

The Bureau of Reclamation resolved this question against the tribes based on a very strained reading of the 1940 Federal statute, even though, in our view and the opinion of our legal counsel, the Bureau of Reclamation has the same fiduciary duty toward Indian tribes as any other agency of the United States.

On the other hand, the Bureau of Indian Affairs has taken the position that a Federal fiduciary duty extends to the reservation wildlife and, by analogy, fisheries. Under this analysis far more than the Bureau of Land Management's strained reading of the 1940 legislation would be required to justify the diversion of reservation water from our tribal fishery to non-Indian irrigators in years of shortage.

Let me now turn to my second area of concern; namely, that the Bureau of Indian Affairs continues to impede the Shoshone Tribe's exercise of self government. The example which is discussed in specific detail in my written testimony involves the BIA's interference with the tribe's administration of Public Law 93-638 grants which is used for our fish and game code program.

I will not go into the details here of the magnitude of that interference since it is set forth clearly in my written submission, but let me indicate the high points briefly.

The Bureau, in violation of its own regulations, suspended the tribe's grant at great cost to the tribe. The grant was eventually restored.

Then, in violation of spirit and letter of the recent amendments to the Indian Self-Determination and Educational Assistance Act, the BIA, through a series of cynical, procedural maneuvers, does not have the decency to have our appeal from its decision formally heard, apparently because the Bureau appreciates that if the tribes prevail on appeal, the money we paid attorneys to correct the BIA's error will have to be reimbursed to us under the recent amendment to the Indian Self-Determination Act.

Mr. Chairman, this concludes my testimony.

Again, on behalf of the Shoshone Tribe, I want to express our appreciation for the opportunity to present our views concerning some of the major issues which affect the Wind River Reservation and the rest of Indian country.

I will be happy at this time to answer any questions you may have.

[Prepared statement of Mr. Washakie appears in appendix.]

Senator DECONCINI. Thank you, Chief Washakie. I wanted to advise you that someone from the committee—Mr. Anderson, as a matter of fact—intends to be on your reservation next week, I believe, in compliance with some of your requests.

Let me ask you a question if you can give me in 50 words or less, if possible: in each of your opinion, what does tribal sovereignty or Native American sovereignty mean to you? Mr. Sidney, would you like to start?

Mr. SIDNEY. Mr. Chairman, I can best describe tribal sovereignty as that of the actuality of the Indian tribes running its own affairs. On Hopi it would include not only the tribal government, but the traditional form of government that we still practice today.

However, let me make this point, Mr. Chairman: I strongly believe that tribal sovereignty, in respect to the Hopi, is that we are recognized as having the sovereignty being under the U.S. Government, or part of the U.S. Government, is that as long as we speak Hopi, as long as we live like Hopi, and as long as we practice our Hopi religion and have the skin color that we have today that is sovereignty. The day we lose all of that we are part of the mainstream of society. So how we protect our "Indianism," as I call it, that I view as our sovereignty.

Senator DECONCINI. Thank you.

Mr. Taylor, can you respond to that?

Mr. TAYLOR. Mr. Chairman, my views would be about the same as the chief before me. Tribal sovereignty to me is Indian tribes running their own government, their own programs, contracting when they want to but not when the government wants them to. As was said a while ago, before we can correct any of the things that are happening here in the United States we have got to become a part of that government and not only be a self-run government, but become a part of the Federal Government, itself, to run programs and help the people here in Washington run programs.

We think on reservations that we can do a heck of a lot better job than you people do up here, but I guess up here you are thinking the same thing about us.

But that would be my thing about tribal sovereignty. Thank you, Mr. Chairman, for asking.

Senator DECONCINI. Chief Washakie.

Mr. WASHAKIE. Simply put, sir, it is the perpetuation of the way of life of the Shoshone Indian.

Senator DECONCINI. Thank you.

Based on those responses—and thank you, those are very cogent responses and things that are thought provoking—in the area of funding of programs, I've already stated—and it is only my view, not the committee's yet, because we haven't developed this—I think we need more self determination, more direct funding to those tribes that can meet a threshhold of responsibility in accounting and let them decide where they want to spend the money.

In that vein, even under the present system with all the bureaucracy and what have you that comes about, is it infringement on tribal sovereignty to have criminal laws that apply to Indian leaders or laws that apply to something like reporting sex crimes, as we apply those laws to the sovereignty, if you want to call it that, of each State in our federation?

For instance, if a county board of supervisors or the mayor of a city or the instance of a housing authority were involved in accepting a bribe or a gratuity or something that is considered illegal in dealing with Federal funds, they are subject to prosecution by the U.S. Attorney.

Now, they are also subject to State prosecution because that is a State crime, as well. They can't be tried for both because of double jeopardy, but they can be tried by either one.

Likewise, the Congress has instituted that all States, in order to receive funds regarding child protective care, must institute child reporting statutes, where that has not been mandated by the Congress as it relates to Indian lands.

I wonder if each of you would respond whether or not you would consider those areas infringement of tribal sovereignty?

Mr. Sidney.

Mr. SIDNEY. Correct response, Mr. Chairman, is no. I don't believe it is infringement on tribal sovereignty.

Mr. Chairman, I believe the three of us elected leaders in front today should be leaders to be of more of an exemplary role to the people that we represent. I say that because the Hopi people, having traditional government their foremost government, still today second guess what the tribal government is really doing.

We have not had a good record also, Mr. Chairman—the leases of our coal lands, the water,—but it is something that we must correct, ourself, and that is more or less on how tribal leadership will respond, how—for example, I didn't just say because when the Indian Health Service and the BIA were arguing about who had responsibility when our children were abused, both saying they didn't, somebody had to do something, and it was the tribal government.

I immediately hired a special assistant specifically for what had occurred. I was able to get office space. We appropriated in-kind money. It would have been a lot easier to say it was the Federal Government's program and you come with the money, but we must make the first step. After all, isn't that what self-determination is all about?

Senator DECONCINI. Good point.

Chief Taylor.

Mr. TAYLOR. No; I don't think it infringes on tribal sovereignty because I think, living on the reservation, that we should abide by the same law that the people do that live off the reservation. If you violate a crime on our reservation, up to a certain amount, we can try you on the reservation. But if you get into the ten major crimes then you have got to leave the reservation court. And if you commit a crime off the reservation, you can be tried in State court. So as long as we live under that American flag, we can be prosecuted just like anybody else.

I don't think it is infringement on our sovereignty to do that, because I think, again, accountability and corruption—I have heard that for the last 2 or 3 weeks—in tribal government.

Again, the Bureau is not living up to its trust responsibility because every lease and every sale on Indian reservations has to be approved by the Bureau before these transactions go on, and if they want to turn their head and say they want to bypass this trust responsibility, then I think the people involved should also be prosecuted because we have paperwork hung up here in Washington, Mr. Chairman, that will cost my tribe next year about $125,000 because they wouldn't process our papers to lease land on our reservation. Anything over a 10-year lease has got to come to Washington to be approved here. A 25-year lease has got to be approved here in Washington. If we can't get our paperwork out of the area office then we can't get anything done.

No, I don't think it is infringing on our sovereignty.

Senator DECONCINI. Thank you.

Chief Washakie.

Mr. WASHAKIE. I'm in a rather difficult situation trying to understand the complete ramifications of criminal acts of tribal leaders.

In my position with the tribe I have to appear at least four times a year before my constituents and provide them with an annual audit, as well as any tribal member is welcome to look at the books, examine the books, and any minutes to meetings are open to them. But, having said that, I believe strongly that the Federal forum is the proper place, and that it doesn't infringe on tribal sovereignty.

By saying that, I mean for Indians as well as non-Indians.

Senator DECONCINI. Thank you.

Senator McCain.

Senator MCCAIN. Thank you, Mr. Chairman.

May I take this opportunity to, as we near the end of the first round of these very important hearings, to thank you for all of the cooperation and, indeed, assistance you have provided me? It has been a pleasure to have the opportunity to work with you on these very important issues, and I look forward to the opportunity of us continuing what sure has been a very important working relationship. I thank you.

I thank the witnesses who are here. I think you made some very important statements.

Chairman Sidney, thank you for your kind words.

I understand the concern that all three of you have stated that we must preserve tribal sovereignty. I agree with that for a variety of reasons, not the least of which is the solemn treaties that were signed between the Federal Government and not only the tribes represented here, but every tribe in America.

Senator DeConcini and I, in a statement that we are making together, have found kind of an interesting statistic concerning the size, "The allotment process began in 1887. There are about 138 million acres of land in Indian ownership. When the allotment era ended in 1934 there were 52 million acres of land left in Indian ownership." That's a very interesting and little known statistic.

Please be assured that there is no intention on the part of this committee to infringe upon tribal sovereignty. But, as you point out, there is an accountability for all of us who are elected officials—whether we be State, county, local, Federal, or tribal officials—and I appreciate your concerns and commitment in that area.

I also think it is important to point out that there have been successes on Indian reservations. Whether they be economic or social successes, there have been some outstanding ones and I hope that we don't create the impression that there have not been. At the same time, when we hear testimony such as yours, Chief Taylor, of 40 percent unemployment—I don't know what yours is, Chairman Sidney—and those numbers are a little bit deceiving in that the majority, at least on most reservations, are employed by either the tribal government or by the BIA, and if you take those out then the numbers would be significantly higher.

I have a couple of questions.

Chief Taylor, you said that you have a different relationship with the BIA than what you saw displayed here before the committee. Would you elaborate on that statement?

Mr. TAYLOR. Well, especially in accountability. I was listening to the gentleman from BIA talk a while ago, and it seemed like every question that the chairman asked him he just didn't know the answer or had to go back and get it. That's what we get on the reservations. We get put off, they leave it to the area director to work with us, and 9 times out of 10 we don't get the answers there and we have got to go back to the central office, then most of the time we have to use the old political route of going to our Senators and Congressmen and try to shake the information loose from the Bureau and IHS that should be ours anyway. That's what I was getting at. And also with the HUD operation.

It is just different when they are sitting here in front of you and when I get back to the reservation and make that same phone call to them, they're not available. If you had asked HUD about our success in housing, they couldn't have given you an answer. But I think we're the only tribe that they have allowed to build houses under the forced account method that we could go in there and build them, and we proved to them—it makes them look bad that we have proved to them we can build better houses, more houses, with the money that they're giving us. We can put up a better house for $45,000 than they contract out for $70,000.

These are some of the things that are not getting to the committee, I don't think.

Senator DeConcini. Thank you, Chief.

Let me ask two more questions. One is something that I am tempted to say quite frequently, and particularly when I am frustrated—and I'm sure that you, as tribal leaders, feel it more often than I do—and that is, "Let's do away with the BIA." What is your response to that? Chief Washakie?

Mr. Washakie. The Shoshone Tribe has been rather slow in contracting, but we are gaining momentum for a number of reasons. With the Bureau of Indian Affairs, as well as other Federal agencies, we have established laws that have much higher standards than those that they choose to use.

In the area of contracting, contracting certification, we have a 85 percent proof of ownership, plus the proof of financial records and whatever titles of equipment that we can. In doing so, HUD said that 51 percent ownership was enough. We were threatened with losing a housing project because we had imposed the 85 percent ownership standard, and in that instance they prevailed and we have made an exemption within our regulations for it, but only because we had been threatened with loss of housing—much needed housing.

So those are reasons that we're moving. We are very interested in the 20 or 10 projects that the Bureau has funded to do a study and see if they can replace the Bureau of Indian Affairs. That's another 638 act. And so we are very interested in looking at those studies.

Senator DeConcini. Over time you would like to see the tribe totally independent of the Bureau of Indian Affairs?

Mr. Washakie. I would like to see it to where there is only a superintendent there. For some reasons that I haven't been able to justify I only think there needs to be a presence because of our relationship with the United States.

Senator DeConcini. Do you think you can do that in a reasonable length of time?

Mr. Washakie. I would like to see it over 10 to 15 years. I'm only in office for 2 years at a time, but that seems to be the mentality of our council at this time.

Senator DeConcini. Chief Taylor, would you like to see the BIA done away with?

Mr. Taylor. No; I wouldn't. I think that just because your car quits running good you don't discard it, you get it fixed. You fix the problem. I think there should be more approving authority done on a local level—superintendent level instead of the Washington level. I think the superintendent could approve leases faster and help the tribes more than if you have to come to the Secretary of Interior to do it or the Under Secretary.

I think there is a trust responsibility there, and to be honest with you, Mr. Chairman and members of this committee, some of the tribes couldn't survive.

I think—and I hope these other two chiefs don't jump me—the Eastern Band of Cherokee Indians has demonstrated their ability for economic development. We are the only tribe in the business that exercises taxation. We went to the State general assembly in 1952, and they allowed us to collect a tribal levy instead of collecting State sales tax on our reservation. The reason they did that, Mr. Chairman and members of the committee, is that there were only about three stores on our reservation then and there wasn't any money. Now we are a complete town. We have chain motels, we have chain restaurants, we have amusement parks.

Now that levy that they let us collect on the reservation, which is all spent right back in tribal government, will average about $2 million a year which we use to—I think we're the only tribe that the BIA doesn't pay for our police department. We are the only tribe that pays for our police department, fire department, sanitation department. This is something that doesn't come from Federal or State dollars. We pay for it ourselves.

Also, we put about $250,000 a year of our money in the education program. Again, we're having to pay for something that the BIA should be paying for.

But I don't think—and I hope that the people around the country that may read this don't take me wrong, I'm not trying to put Indian tribes down, but I don't think some of them could survive, and it would be hard for our tribe to survive without some of the technical assistance that we get from the Bureau of Indian Affairs.

Let's clean the act up. Let's make the thing work. If it is not working right, let's make it work right. Jointly through this committee and tribal leadership around the country and Congress we can make the BIA be accountable and be a working thing to help the Indian tribes.

Thank you, Mr. Chairman.

Senator McCain. Thank you, Chief Taylor.

Chairman Sidney, with his characteristic modesty, will not tell you about the enterprise on the Hopi Reservation where there is a factory that is run by Koreans that makes hats that they sell to the Japanese. [Laughter.]

We think that is an ideal reservation industry, by the way.

Go ahead, Mr. Chairman.

Mr. Sidney. Senator, traditionally—responding to your question—we will eventually come to that end. Whether it be next year, 10 years, or 20 years, I believe is the question.

Second, traditionally speaking, our elders say our relationship is with the Federal Government, not with the States. They tell us "no relation with the State. Federal Government, yes." I believe the Special Assistant to the President will assist us in the effort to minimize the BIA's role so that they are in a role of assistance, not dictating, too.

When I became a chairman in 1981 we had BIA involved in our tribal council sessions. They are no longer there.

Also, we, as Indian leaders and tribes, need to accept our responsibility. For example, Senator, every year when the scalping is done on BIA, all these past years we come to their rescue. Also, annually when there is talk about eliminating certain BIA area offices to put more money to the tribes every Indian tribe says, "Everybody else's area office, but not mine." So there is no response. Somebody is going to have to take the initiative.

Accountability, what you are doing in this committee, is important.

Also, last, I believe the system is fogged over by the person serving in a worthwhile capacity. Our forefathers have an amazing constitution. There are the reasons why the BIA is there, but I feel it is the people that are not "answerable."

In 1983, when I found my vice chairman misusing tribal funds and as a result he was indicted in a Federal grand jury I had a BIA superintendent subpoenaed and was testifying as a character witness in his behalf. I was on the other prosecution side, what is the role of the Federal Government?

These are instances I feel need to be surfaced.

But, to answer your question, eventually there will be a day of that, and we should work toward that end and strengthen tribal government as we go along. As long as we have strings attached, we are not totally sovereign, we are not totally self-sufficient, but we need a helping hand, not hand-out.

Senator McCain. Thank you.

In closing, I would like to thank the three of you for your support for the efforts of this special committee.

We have heard from hundreds of Native Americans throughout this country who have expressed their support for what we are trying to achieve, which is a balanced and fair assessment and an honest, good-faith effort on the part of this committee, lead by our chairman, to enact policy and legislative changes to provide Native Americans with the ability to carry out their tribal sovereignty in fulfillment of the solemn commitments that were made by our forefathers in the consummation of solemn treaties between ourselves and Native Americans.

We thank you for your expression of support, and we certainly would appreciate any criticism and other direction you might have for us because I think you speak for some very important Americans.

Thank you, Mr. Chairman.

STATEMENT OF HON. DENNIS DeCONCINI, U.S. SENATOR FROM ARIZONA, CHAIRMAN, SPECIAL COMMITTEE ON INVESTIGATIONS OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator DeConcini. Thank you, Senator McCain.

And thank you, chairman and chiefs. We appreciate it.

As this is going to be the end of our first round of hearings, I want to pay particular thanks to the staff of the committee: Ken Ballen and all the counsel and support staff, for the excellent preparation; those detailees who have been assigned to us for the Senate Rules Committee for making the accommodation for those detailees and those who assisted in security arrangements.

Over the last month we have heard approximately 45 hours of testimony from 90 witnesses. The record that has been laid before us during the first round of public hearings is certainly a bleak one. Repeatedly we have been told how mismanagement and corruption are sapping the vitality out of Indian country.

As we have listened to the evidence over the past 4 weeks, it has become increasingly clear that the Federal Government is not fulfilling its trust responsibility to the Indian people. Some of our nation's most respected legal authorities have told us that the Federal Government has not adequately represented Indian interests in court.

We have seen how Indian contractors are often victimized by large, non-minority businesses that abuse Indian preference laws to gain millions of dollars in Federal contracts. We have also seen how these and other contractors fall victim to corrupt tribal governmental officials who insist on receiving gratuities and kickbacks and bribes.

These are widespread—although not universal—problems, and they are systematically undermining economic opportunity for all American Indians.

As I stated when we opened these hearings almost 1 month ago, "Every tax dollar wasted by an incompetent administrator and every tax dollar diverted by a corrupt individual comes directly out of the living standard of an American Indian family. Not only are we wasting taxpayer dollars; we are wasting opportunities for American Indians."

But perhaps the most tragic testimony we've heard is the story of child sexual abuse in the BIA schools. No loss of economic opportunity caused by waste and corruption could ever compare to the pain and suffering inflicted upon these Indian children and their families. Our hearings on child sexual abuse have been a case study in the shortcomings of the BIA and the IHS. Whether we were looking at the hiring of teachers, the handling of complaints, or the social services provided to victims, we could only come to one conclusion: the BIA has been grossly negligent in protecting the resources that American Indians care about most deeply—their families and culture.

A common thread runs through these problems. Congress has enacted extensive legislation concerning Indian country, but we have repeatedly failed to build in the necessary safeguards to assure that these programs work correctly. All too often accountability and integrity are lacking in the Federal-Indian relationship. Ultimately, those of us who serve in the U.S. Congress must share the blame for these programmatic failures.

We in Congress have mandated that all 50 States must have child abuse reporting laws, yet we have not legislated such requirements for BIA schools. We have enacted Federal criminal statutes covering gratuities and conflict of interest for Federal, State, and local officials; yet, we have not shown a parallel concern for tribal government officials.

As the distinguished chairman of the Hopi Tribe noted in his statement this afternoon, it is Congress that the Indian people must look to as the "ultimate trustee in this relationship." Hopefully the work of this committee will assist Congress and the Executive branch in fulfilling that very special and very unique responsibility.

If our hearings help to put accountability and integrity into our Federal Indian programs, then we will have achieved our purpose. I believe my colleagues, Senator McCain and Senator Daschle, would agree that increased accountability is the key to strengthening Indian self-determination and tribal self-governance.

Over the next few months the Special Committee on Investigations will continue its probe into additional aspects of Indian affairs, including: natural resource management, the Indian Health Service, management of trust funds, Indian education, HUD Indian housing programs, and other topics. Following a second round of public hearings in late spring or early summer, we will issue a final report that summarizes our findings and makes legislative recommendations for change.

The record for the first round of public hearings will remain open for the next 30 days, as Senator McCain has so asked and stated, to allow additional statements to be inserted into the special committee's official record.

Does the Senator for Arizona have any further statement?

[No response.]

Senator DECONCINI. If not, the hearings will stand in recess until further call of the Chair.

[Whereupon, at 5 p.m., the special committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

Additional Material Submitted for the Record

FEBRUARY 21, 1989

Videotape Deposition of Paul Price

Ballen: We are here now at Butner Federal Correctional Institute in Butner, North Carolina. My name is Ken Ballen and I am Chief Counsel for the Special Committee on Investigations and I am with Mr. Paul Price, who is an inmate here at the FCI at Butner, North Carolina, and Mr. Michael Anderson, Associate Counsel to the Special Committee on Investigations. We are going to conduct a videotape deposition of Mr. Price here at Butner Federal Correctional Institute in Butner, North Carolina.

Mr. Price, do you swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Price: Yes, sir, I do.

Ballen: Mr. Price, please state your full name for the record.

Price: Paul Wade Price.

Ballen: Thank you, sir. Mr. Price, how long have you been imprisoned here at Butner, North Carolina?

Price: Approximately three years.

Ballen: And, sir, how long were you sentenced for?

Price: I have a ten year sentence.

Ballen: And what is the offense?

Price: Essentially, child molestation.

Ballen: Mr. Price, and that involves child molestation of minor children?

Price: Yes.

Ballen: Specifically minor boys?

Price: Yes.

Ballen: And boys between the ages of eight and twelve years old?

Price: Correct.

Ballen: Mr. Price, were you yourself molested, sexually, as a child?

Price: Yes, I was.

Ballen: How old were you?

Price: About eight years old.

Ballen: Did that happen more than once, sir?

Price: Yes, sir.

Ballen: Mr. Price, when you became of adult age, did you, yourself, molest other boys between the ages of eight and twelve years old?

Price: Yes, sir.

Ballen: And did that activity continue from the 1950's through the early 70's?

Price: Yes, sir.

Ballen: In 1971, Mr. Price, were you hired as an elementary school teacher at Cherokee Elementary School in Cherokee, North Carolina?

Price: Yes, I was.

Ballen: And the Cherokee Elementary School is on the Cherokee Indian Reservation?

Price: Correct.

Ballen: And it is run by the Bureau of Indian Affairs, the BIA?

Price: Yes, sir.

Ballen: From 1971 through the mid 1980s were you a teacher at the Cherokee Elementary School?

Price: Yes, sir, I was.

Ballen: What grades did you teach, Mr. Price?

Price: Grades three through six primarily and Special Education.

Ballen: Mr. Price, you taught Special Education as well as third, fourth and sixth grades at the Cherokee Elementary School?

Price: That's correct, sir.

Ballen: And what is Special Education?

Price: Primarily involves children with mental retardation and emotional problems and learning disabilities.

Ballen: When did you start teaching Special Education in addition to the normal third, fourth and sixth grades at Cherokee Elementary?

Price: Actually my last years at Cherokee, my last three or four years at Cherokee were in Special Education.

Ballen: Sir, you were hired approximately 1971 or 1972. Is that correct?

Price: As I recall, yes, sir, that's correct.

Ballen: During the fourteen years that you were a teacher at Cherokee Elementary School, did you physically molest young boys, once a week, or several times a month throughout that entire period of time with certain gaps in time where you refrained from that activity?

Price: That's a correct statement. Yes, sir.

Ballen: And these would be different boys?

Price: Yes, sir.

Ballen: And it would occur on weekends as well as school days?

Price: On occasion, yes, sir.

Ballen: And would this occur on school grounds as well as off school grounds?

Price: Very limited on school grounds, but primarily off school grounds.

Ballen: Did it occur sometimes on school grounds?

Price: Yes, sir.

Ballen: And would this involve both fondling, touching, as well as mutual masturbation?

Price: On school grounds would be strictly fondling. Off school grounds would involve mutual masturbation.

Ballen: Sir, when you testified earlier that before you came to

Cherokee you had engaged in this same pattern of child molestation. Is that correct?

Price: That's correct.

Ballen: When you came to Cherokee, did anyone do a background check on you?

Price: As far as I know, nothing other than just the regular 171 check which I assume the government does.

Ballen: Did anyone ask you whether you had engaged in any of this kind of activity?

Price: No, sir.

Ballen: Did anyone make any inquiries of former supervisors or people that you had worked for who had suspicions of this activity?

Price: To my knowledge, no.

Ballen: Mr. Price, you testified that you engaged in this pattern at the Cherokee Elementary School. How would you go about seducing the boys? Would you win their trust?

Price: I'm certain that that would be involved -- winning trust. Yes, sir.

Ballen: Did you give gifts to them?

Price: Absolutely, yes, sir.

Ballen: Is that a way to win a sexual partner?

Price: I'm sure it was.

Ballen: Mr. Price, after you won their trust, what would happen?

Price: It would become a complete friendship that would later involve sexual activity.

Ballen: Did it start with just physical closeness?

Price: Yes, sir.

Ballen: And then that would proceed to sexual activity?

Price: Right, right.

Ballen: What were the ages of the boys involved, Mr. Price?

Price: Primarily eight, nine, ten, eleven and twelve.

Ballen: Was there any particular reason that focused on this age group as opposed to another age group?

Price: Probably two reasons. One was that was the age group that I was teaching. And secondly, I'm sure that there was the possibility that younger children don't generally tell things, as the older children do.

Ballen: Young teenage boys, on the contrary, would be likely to talk, to tell?

Price: Oh, yes, yes.

Ballen: Sir, did the other teachers at the school know what you were doing -- child molestation?

Price: I don't know that they knew, but I certainly suspect that they knew.

Ballen: And you made a statement earlier that you were surprised that you could continue with this kind of activity for fourteen years at the Cherokee Elementary School?

Price: This is strictly hindsight. Looking back, it certainly is a phenomenon that's hard to understand.

Ballen: And this is because you weren't married, you were physically close to the children. It didn't take a genius to figure out that something was happening.

Price: Absolutely.

Ballen: In fact, on a number of occasions there were complaints about your activity, wasn't there?

Price: Yes, sir.

Ballen: And this occurred repeatedly during the fourteen years at different points in time?

Price: Yes. On a number of occasions. Yes, sir.

Ballen: Each time there was a complaint, a supervisor would question you but never confronted you directly. Would that be a fair statement, sir?

Price: I think that would be a fair statement.

Ballen: In other words the supervisor would say something to the effect, "Well, Paul, why don't you get married?"

Price: That was one remark, yes, sir.

Ballen: Or on another occasion something to the effect that, "You didn't really do this, did you?"

Price: Yes. A number of times.

Ballen: But at no time did anyone tell you, did they, that, "If you don't stop now I am going to file charges against you?"

Price: Never.

Ballen: No one put the screws on, did they?

Price: That's one way of putting it. Yes, sir.

Ballen: In fact, wouldn't it be fair to say that you wanted someone to stop you?

Price: I'm sure that I was waiting for someone to stop me. Yes, sir.

Ballen: Did you have the willpower to stop this on your own?

Price: Just for limited periods of time.

Ballen: And then you would go back to it?

Price: Right.

Ballen: Mr. Price, I have nothing further. I would like to ask Mr. Anderson to resume the questioning.

Anderson: Thank you, Mr. Ballen. Mr. Price, you worked at the Camp Lab School prior to joining Cherokee Elementary. Is that correct?

Ballen: That is correct, sir.

Anderson: And you did not list Dr. Justice as a reference from the Camp Lab School, did you?

Price: No, I did not.

Anderson: And if you had listed Dr. Justice as a reference there was a possibility that he may have told Cherokee that there were allegations of sexual misconduct on your part at Camp Lab. Is that right?

Price: I think that would be right. Yes, sir.

Anderson: Mr. Price, you were also questioned at one point in the 1970's by the principal, T.J. DuPree, about a possible allegation of child sexual abuse. Is that correct?

Price: That is correct.

Anderson: And this wasn't a confrontation directly but more of an indirect questioning by Mr. DuPree?

Price: Yes, sir.

Anderson: And what was the substance of that questioning by Mr. DuPree?

Price: Essentially, he had received a report from another staff member there that questioned my conduct. As I recall, I went into his office and we discussed touching children -- why I should not do that. I am sure that he gave a suggestion that I refrain from touching children.

Anderson: And did you deny that you were touching children?

Price: No, I never denied touching children. But there is a little difference in touching children and touching the children with a sexual intent.

Anderson: Did you deny touching children with a sexual intent?

Price: Right.

Anderson: And were you contacted by the FBI after this particular allegation?

Price: No, sir, I was not.

Anderson: Were you contacted by the BIA after this allegation?

Price: No, sir.

Anderson: Mr. Price, at a certain time in 1982 or 1983 you were also questioned by Bruce Martin concerning an anonymous letter with allegations of sexual child abuse. Is that correct?

Price: That is correct.

Anderson: And what was the substance of your conversation with Mr. Martin?

Price: Of course, the first thing is I denied it, of course, and he seemed to accept my denial and I don't recall that he cautioned me not to touch children, but at least I'm sure that was part of the discussion.

Anderson: After that questioning by Mr. Martin, were you contacted by the FBI about that incident?

Price: No, I was not.

Anderson: Were you contacted by any BIA officials after that questioning by Mr. Martin?

Price: The only thing was I had a conversation with Mrs. Widenhouse relative to that.

Anderson: And what was the substance of the conversation with Mrs. Widenhouse?

Price: Again, the same thing. Don't touch children.

Anderson: Did she ask you directly whether you were touching children with a sexual intent?

Price: I do not recall that specific question.

Ballen: Mrs. Widenhouse was the principal at the time.

Price: Yes, sir.

Anderson: Mr. Price, were you contacted by the FBI at any time prior to your indictment for molesting children?

Price: No, sir, I have never had any contact with the FBI either before or after.

Anderson: Mr. Price, shortly before our taping today, you gave me a list of some of the children who you had fondled when you were at the Cherokee Reservation. Is that correct?

Price: That is correct.

Anderson: All right. I have no further questions, Mr. Ballen.

Ballen: Thank you very much, Mr. Anderson. Mr. Price, I have two questions. Would it be fair to say that during your time at Cherokee you sexually molested at least 25 boys.

Price: I think that would be a fair assumption. Yes, sir.

Ballen: And at no time during that period of time did anyone report you to the authorities or strictly try to stop you to engage in this activity. Would that be fair, too?

Price: No. Nothing that I can recall ever.

Ballen: And this was something that, because of your physical closeness to the kids, was readily observable by anyone working in that school.

Price: Correct.

Ballen: Mr. Price, how do you feel now, having come here and talked to us at Butner?

Price: Strangely, I feel better because this is the first time in my life that I have ever admitted that this has taken place in my life. It sounds strange but I am grateful that, as you put it, the screw finally reached me.

I've had time, of course, in prison to reflect over this and the seriousness of it. I never, ever was able to really, you know.... Fondling is, you know, in my mind I was thinking, you know, it really doesn't hurt anybody but yet I know now how much it does hurt.

And I'm just thankful, I guess, that I have been able to come this far, and to actually face it, and my concern now is for all those people out there that are going through this same kind of conduct which is absolutely.... We just must find a way to help the children, first -- and of course the molesters also -- above all the children who, who really don't know what they're getting into.

Ballen: Thank you, Mr. Price. Just so the record is clear, you are here having pled guilty to one instance of child molestation. You have never before talked about all the other instances before today. Is that correct?

Price: No, never.

Ballen: Thank you very much, Mr. Price. That concludes our videotaped deposition, this date of February 13th, 1989.

STATEMENT

OF

DAVID LINCOLN SMALL

SUPERVISORY SPECIAL AGENT

PHOENIX DIVISION

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

SPECIAL COMMITTEE ON INVESTIGATIONS

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

WASHINGTON, D.C.

FEBRUARY 21, 1989

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am honored and pleased to appear before you to discuss Child Sexual Abuse investigations conducted on Indian Reservations by the Phoenix Division of the Federal Bureau of Investigation.

On May 15, 1986, Public Law 99-303 was signed into law amending Title 18, U.S. Code, Section 1153, the Indian Major Crimes Act, to include "felonious sexual molestation of a minor." In the Phoenix Division, Arizona revised statute 13-1410, "Molestation of a Child," was assimilated into the Federal Major Crimes Act and was applicable for the Federal prosecution of child molesters on Arizona Indian lands. Effective November 10, 1986, the provisions of Chapter 109A of Title 18, U.S. Code were made applicable to Indian Country.

In order to evaluate the probable impact of this additional investigative responsibility, the Phoenix Division initiated a field survey to learn if child sexual abuse was prevalent on the Indian Reservations in Arizona. On all twenty reservations in the state, Phoenix FBI Agents contacted Tribal Police, Bureau of Indian Affairs (BIA) investigators, Tribal Social Services Representatives, and Indian Public Health Service Representatives. Because many of these agencies do not maintain an accurate records system, it is difficult to determine the number of sexual abuse cases which actually occur on the reservations.

In order to address child molestation matters, we began to provide specialized training to those FBI Agents assigned to the reservations. When Congress enacted Public Law 99-303, the U.S. Attorney's Office, in consultation with the FBI and BIA, established guidelines for the investigation and prosecution of these cases. Consequently, the FBI in Arizona conducts active investigations whenever an adult victimizes an Indian child on a reservation. The majority of sexual molestation cases are investigated by the FBI, and the balance are investigated by the BIA and Tribal investigators. More often than not, these cases involve investigators from the FBI, the BIA, and the Tribes.

Within our office, we have concentrated our manpower against those individuals who use their employment to access their victims, such as school personnel who molest their students. We have conducted 96 sexual molestation investigations since receiving this jurisdiction and have identified several pedophiles employed by the BIA and public schools located on Arizona Indian reservations. To date, four non-Indian school teachers have been convicted in Federal court on sexual molestation charges and have received very lengthy prison sentences. Two school teachers are currently awaiting trial on

felonious sexual molestation charges. Other BIA and public school personnel have also been convicted or are awaiting trial on these same type charges.

Some of the associates of these pedophiles have obstructed, delayed, and attempted to thwart our investigations. BIA school officials have generally been responsive, but Arizona State Public School Districts have frequently taken the position that FBI Agents cannot interview children who are molestation victims or witnesses without parental authority. **In some of these cases the parents are nowhere to be found and the subject of the investigation is the guardian of the victim.** It is interesting to note that of all the molestation cases investigated by the FBI against school personnel, none have been reported to law enforcement authorities by anyone in the school system.

In some instances, school officials have involved themselves in our investigations by re-interviewing molestation victims and/or witnesses which in our perspective re-traumatizes the child unnecessarily. Some of these victims and/or witnesses have subsequently related to FBI Agents that when interviewed by school officials, they recanted their previous statements made to the FBI for fear of reprisals within their own school system.

Currently, in the District of Arizona, there is a civil suit wherein 53 victims are suing the Federal Government for $265 million alleging a BIA school teacher, who has been Federally convicted of child molestation charges, committed an assault and battery upon their person. There is another suit in our district wherein eight children and 15 parents are also suing the Federal Government for $50 million to $60 million in an identical situation.

Notwithstanding the difficulties we encounter in successfully investigating these types of cases, I can assure you that we will continue to consider child sexual abuse on Indian Reservations as an investigative priority of the Phoenix Division.

Gentlemen, this concludes my prepared statement and I will be happy to attempt to answer questions that you may have.

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

STATEMENT
OF
JAMES G. PERRY
SUPERVISORY SENIOR RESIDENT AGENT
RAPID CITY RESIDENT AGENCY
MINNEAPOLIS DIVISION
FEDERAL BUREAU OF INVESTIGATION
BEFORE THE
SPECIAL COMMITTEE ON INVESTIGATIONS
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
WASHINGTON, D.C.
FEBRUARY 21, 1989

Mr. Chairman and Members of the Committee:

I am pleased to appear before you and discuss the FBI's law enforcement role as it pertains to the investigation of Child Sexual Abuse matters on Indian Reservations.

I. JURISDICTION ON INDIAN RESERVATIONS IN NORTH DAKOTA, SOUTH DAKOTA AND MINNESOTA

The Minneapolis Division of the FBI, which includes the three-state area of Minnesota, North Dakota, and South Dakota, has investigative jurisdiction for criminal violations occurring on 15 Indian Reservations, which have a total population in excess of 78,000. These Reservations are:

NORTH DAKOTA

1. Devils Lake (Fort Totten)
2. Fort Berthold
3. Standing Rock (Upper)
4. Turtle Mountain

SOUTH DAKOTA

5. Cheyenne River
6. Crow Creek (Fort Thompson)
7. Flandreau
8. Lower Brule
9. Pine Ridge
10. Rosebud
11. Sisseton
12. Standing Rock (Lower)
13. Yankton

MINNESOTA

14. Bois Fort (Nett Lake)
15. Red Lake

Sexual abuse of children has been a crime problem on Indian Reservations, particularly in South Dakota, for several years, but was not adequately addressed because of the limitations of the criminal statutes. Congress addressed this problem in Public Law 99-303, which added "felonious sexual molestation of a minor" to the Indian Major Crimes Act, Title 18, United States Code, Section 1153, on May 15, 1986, and by passing Public Law 99-646, which became effective November 10, 1986. Public Law 99-646 created a new Chapter, 109A, of Title 18, United States Code. Chapter 109A deals specifically with sexual abuse violations. Among other things, Chapter 109A reforms Federal rape provisions and provides four substantive sections addressing sexual abuse, including sexual abuse of children. These sections generally define a child as a person less than 12 years old, and a minor as a person less than 16 years old. The felony provisions of Chapter 109A are made applicable to Indian country by Title 18, United States Code, Section 1153.

II. CHILD SEXUAL ABUSE CRIMES

The number of investigations based on child sexual abuse violations on Indian Reservations has increased dramatically since this statute became effective. Once the various social service agencies became aware of the new law, they increased their referrals to the FBI and other Federal law enforcement agencies. The number of such investigations initiated by the FBI prior to the passage of this legislation was minimal. By the end of Fiscal Year 1987, the number of cases initiated had grown to 47 and reached 64 by the end of Fiscal Year 1988. Sixteen convictions were obtained in connection with these violations in 1987 and a total of 29 were obtained in Fiscal Year 1988. The response of the FBI and other Federal agencies to this crime problem has been extremely well received by the citizens on the Reservations.

In addition to the limitations of the criminal statutes prior to May, 1986, these cases were also constrained by the reluctance of victims both to report the crime and to testify. Experience indicates that it is extremely difficult for some child victims to disclose information concerning such crimes. The persons to whom they would disclose such incidents quite often are the abusers, such as adult members of the family or caretakers. Some children are not willing to risk losing the person who cares for them by testifying against them because they still love them, although the person may be doing the child harm.

In addition to being reluctant to report these crimes, many children find it very difficult to talk about their sexual experiences. Very specific information is required from the victim in order to support further investigation and ultimate prosecution. A child's natural reluctance is intensified by the prospect of having to disclose such information before a grand jury or in a courtroom setting.

Because the victims of sexual abuse are normally far from professional services, detection of such crimes is difficult. The volume of investigations initiated continues to grow in spite of the fact that Indian Reservations are rural in nature and most often are quite remote from large population centers. The FBI has made a concerted effort to ensure that those persons and agencies who are associated with social services and law enforcement on Indian Reservations, and who come in contact with possible victims of child sexual abuse, are aware of the signs of such abuse and of the Federal Government's keen interest in pursuing such cases.

III. TEAM APPROACH TO CHILD SEXUAL ABUSE INVESTIGATIONS

The FBI's experience in South Dakota is the model for the following description of our methods and procedures for investigating child sexual abuse.

The team investigating child sexual abuse allegations has certain core members and a larger group of members which varies according to the needs of the case. The core members of the team are an FBI Agent, a social worker, a clinical psychologist, the United States Attorney's Victim/Witness Coordinator, and an Assistant United States Attorney.

Cases are normally reported to the FBI by the South Dakota Department of Social Services (DSS), which learns of the incidents through contacts with various agencies, including Tribal Police or Bureau of Indian Affairs (BIA) Police. When evidence of child sexual abuse is detected, all of the agencies concerned consider the child's welfare to be of paramount importance.

Once the FBI learns of a possible violation of the child sexual abuse statutes, a Special Agent contacts the reporting social service agency to determine the type of abuse and when and where it occurred. The FBI arranges for a physical examination by qualified physicians to diagnose the abuse, recommend a course of treatment, and to determine whether any physical signs of abuse are present. The FBI also arranges for a psychological evaluation of the victim to supplement diagnosis, evaluation and treatment.

The child is normally placed in a safe environment to ensure he/she is not abused or retaliated against by the perpetrator or relatives of the perpetrator. Proper investigation cannot be conducted while the victim is still living with the alleged abuser in the environment where the abuse occurred. The Tribal Police and BIA, as a result of training and workshops, understand the necessity for this and arrange for the DSS to secure the children. Normally the child has to be removed from the home pursuant to a tribal court order obtained by the DSS.

A Special Agent of the FBI is responsible for administering the entire case prior to trial by gathering information from various sources, correlating it, and presenting the facts to the United States Attorney's Office. The victim is usually interviewed by a social worker first, sometimes with a Special Agent, and is then transported for medical and psychological examinations by the social worker. In most cases, the Special Agent, the social worker and the Assistant

United States Attorney visit with the family and the children subsequent to the indictment and prior to trial. There is always at least one visit to the Assistant United States Attorney's Office and courtroom prior to the trial for a pretrial conference and familiarization with the courtroom. Often the victims and families are transported hundreds of miles by the social worker. These investigations are pursued in this manner to ensure that all the necessary steps are accomplished with minimal duplication of effort. Care is exercised to ensure the victim is not revictimized by being forced to retell his or her story repeatedly to each member of the team. According to the latest psychological evidence, this manner of handling investigations and courtroom testimony is a theraputic experience and helps the victim to recover from the trauma.

Another important aspect of the team approach is the support which individual members provide each other in dealing with the stress associated with such investigations.

The Victim/Witness Coordinator maintains contact with the victims through indictment and trial, and assists in dealing with the court system and the United States Attorney's Office. Once the trial is complete, the coordinator provides follow-up services to ensure that the victim is properly relocated and receives necessary medical and/or psychological care.

It is through the efforts of all these persons that the primary goals of the team are met, which are prevention of further victimization of the child and the prosecution of the perpetrator.

The following are two examples of child sexual abuse cases.

On March 18, 1987, investigation was instituted of allegations that Robert Red Feather, an Oglala Sioux Tribal Police Officer, had sexually abused his daughter, aged 12. Investigation indicated that the sexual abuse involved fondling, which led to sexual intercourse, which occurred approximately ten times over a two-year period. One incident included allegations that Red Feather held a gun to her head. Interviews of the victim, her sister, who is a year younger, her mother, social workers and school officials indicated that the allegations against Red Feather were true. Red Feather was given a polygraph examination and he made a partial confession to a Special Agent. Thereafter, he was charged in a nine-count indictment of several counts of sexual abuse. Red Feather testified during his trial and denied any wrongdoing, relying on the fact he was a police officer. He was convicted in United States District Court, Rapid City, South Dakota, and was sentenced to fifty years in prison.

In June, 1988, the BIA Police, in Lower Brule, South Dakota, reported to the FBI that Lonnie Clayton Fawbush, who is not a Native American, had sexually abused a two-and-one-half-year old Native American girl, who was being cared for in Fawbush's house. Extensive investigation by the Pierre Sexual Abuse Team determined that the victim was, in fact, sexually molested on what appeared to be a continuing and chronic basis from October, 1987 until May, 1988. Interviews with Fawbush's wife and daughters indicated he had sexually abused both daughters and caused one daughter to be pregnant with his child several years earlier. Fawbush admitted the incest and entered treatment programs in Connecticut and Pennsylvania. At the conclusion of the treatment and before moving to South Dakota in May, 1986, Fawbush became a minister.

When interviewed regarding these allegations, Fawbush admitted the abuse of his own children, but denied any sexual abuse of the victim in this case. He stated he was a bus driver for the Lower Brule school system and admitted he was very affectionate and loving toward children. Because school was scheduled to start at the end of August, Fawbush was indicted in August, 1988, on four charges of Aggravated Sexual Abuse involving this victim.

Subsequent investigation substantiated that other children in the care of Fawbush and his family were also sexually abused. He was subsequently charged in a superseding indictment in October, 1988, of an additional three charges of Aggravated Sexual Abuse of a three-and-one-half-year old girl and one count of Abusive Sexual Contact with a seven-year-old boy. He was tried in United States District Court, Pierre, South Dakota, in January, 1989, and convicted on the counts involving the two girls. The judge dismissed the count on the seven-year-old boy prior to jury deliberations because the boy was unable to sufficiently articulate the circumstances when he took the witness stand. Fawbush is currently awaiting sentencing.

The Minneapolis Division of the FBI sponsored a Child Sexual Abuse Seminar at Rapid City, South Dakota, during the week of May 24, 1988. The purpose of this conference was not only to enhance the training of FBI Agents and other investigators, but also to bring together a cohesive effort addressing enforcement, rehabilitation, and prevention. Among those invited to attend the conference were Special Agents of the FBI; investigators of the BIA; tribal authorities, including tribal police; state and Federal social services workers; state and Federal prosecutors; judges; Victim/Witness Coordinators; educators; members of the clergy; interested private citizens; and members of the news media. Response to the conference was overwhelming. It was attended by approximately two hundred individuals, including representatives from Indian Reservations in North and South Dakota, Minnesota, and Nebraska. Widespread media coverage significantly supplemented the enthusiasm of attendees, and there has since been obviously increased awareness and more expeditious reporting of new cases.

The FBI is utilizing the team approach to these investigations in varying degrees in other areas of South Dakota, North Dakota, and Minnesota. The number of cases initiated and convictions obtained has continued to increase despite the complexity and stress associated with these investigations and prosecutions. The professionals who participate in these investigations are extremely dedicated and will continue to devote themselves to this effort. These violent crimes, made even more abhorrent because children are the victims, will continue to be the highest priority of the FBI in Indian Country.

Mr. Chairman, I would be happy to answer any questions you or other members of the Committee may want to ask me regarding sexual abuse of children on Reservations.

LUMMI INDIAN BUSINESS COUNCIL
2616 KWINA RD. • BELLINGHAM, WASHINGTON 98226-9298 • (206) 734-8180
DEPARTMENT: ______________________ EXT. ______

WRITTEN TESTIMONY BY R. BRUCE HALEY;

Law and Order Administrator, Lummi and Swinomish Tribes in Washington State: General Chairman of the International Association of Chiefs of Police Indian Law Enforcement Section.

Honorable Chairman, and Senators of the Special Committee on Investigations:

I wish to thank you for allowing me to testify Tue. Feb, 21, 1989 and to tell you about problems faced by Indian tribes today in the area of child abuse and what the tribes are doing to attempt to resolve this problem particularly in Western Washington State.

Historically Indian tribes have been dependent upon the Bureau of Indian Affairs and the Department of Justice for protection and safety in Indian country. It has been found that this is part of the problem tribes have in their criminal justice system. The tribes must rely on the Bureau of Indian Affairs to seek adequate funding levels for the tribes criminal justice systems and this has not been done. Each reservation must have funds to provide to its residents a professional and conpetent enforcement and court system to meet the needs of the reservation. The Department of Justice is to provide enforcement and prosecution of federal laws on the reservation and to make sure all people know that justice on Indian reservations is swift and sure.

In the Western District of Washington State the U.S. Attorney's Office is responsible for the prosecution of child abuse cases and all 16 Major Crimes on Indian reservations. The Lummi Tribe has sent over 50 child sexual abuse cases for investigation and prosecution by the Department of Justice and I know of only one (1) that has been prosecuted . The U.S. Attorney has taken a few where the defendant has plead guilty.

The Bureau of Indian Affairs in the Puget Sound Agency handles criminal investigations responsibilitites for 12 tribes. The supervisory investigator administers the law enforcement contracts of these tribes and supervises the two (2) investigators that are to investigate federal crimes in these 12 reservations. The Lummi Tribe statistically has had over 50% of the Major Crimes violations of the 12 tribes and has requested a criminal investigator to be stationed in Bellingham, Washington (8 miles from the Lummi reservation and within 50 miles of the 5 tribes in the Northwest Washington State) instead of at the Bureau of Indian Affairs Agency in Everett, Washington. Which is over 75 miles from the Lummi reservation. The Bureau of Indian

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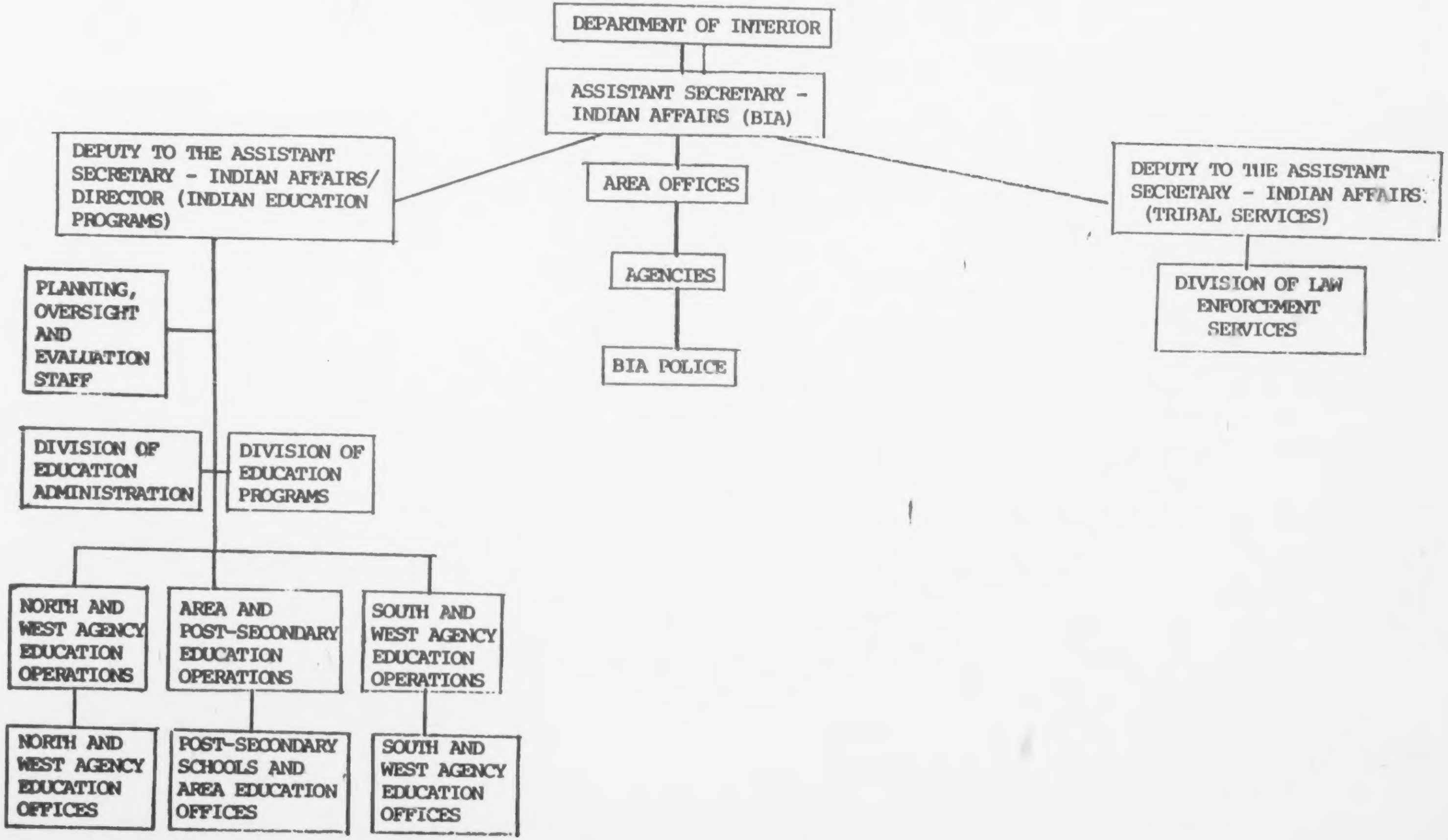
Councilman
VIRGIL L. WILLIAMS
Councilman

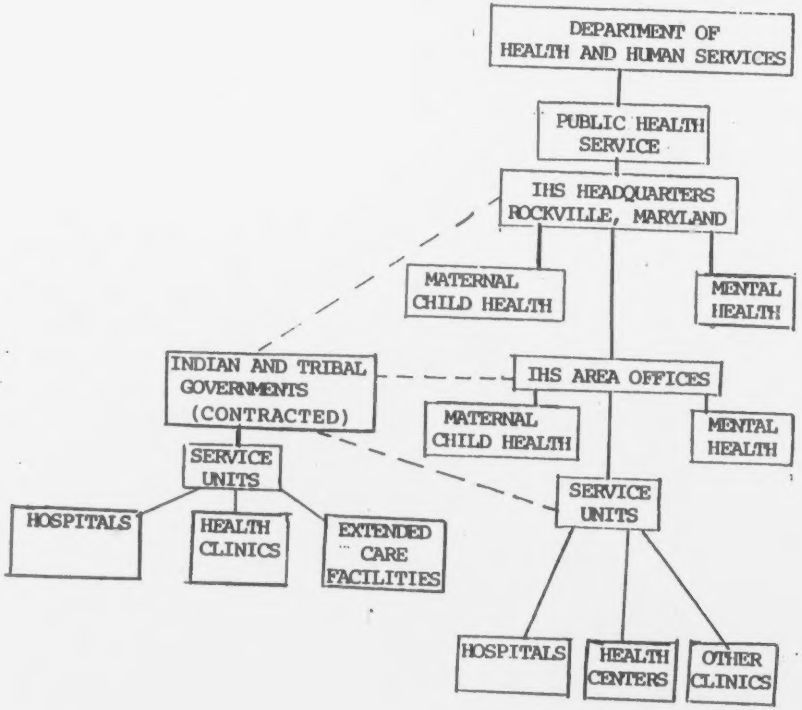
Affairs moved the criminal investigator to Everett, Washington from Lummi when the Lummi tribe started to consider contracting the position under Public Law -638 in 1983. The Lummi Tribe in particular would benefit from its own investigator and the funds should be added to its law enforcement contract so this position could assist the Federal Bureau of Investigations and the County Sheriff's Office in investigation of Child Sexual Abuse and other crimes that occur on the reservation and then cooperating with these agencies in accordance with our Mutual Aid Agreements and Inter-Governmental Agreements entered into and signed by the Lummi Indian Tribe, U.S. Attorney's Office, State of Washington, Whatcom County and the local cities in Whatcom County.

In my testimony February 21, 1989 and the questions following I did recommend that other Indian tribes follow the lead of the Lummi tribe and have a law requiring the reporting of child abuse. I also requested that Congress require the Bureau of Indian Affairs to provide funds to have a basic level of police services, investigation, and court personnel to provide protection to Indian children and the total community. I also believe that Congress must make it clear to the U.S. Attorney's and more especially to the U.S. Attorney's of the Western District of Washington that investigations and prosecution of the 16 Major Crimes in Indian country, especially the two involving Child Abuse, be aggressively handled. There must be a message sent LOUD AND CLEAR that all criminals on Indian reservations will be delt with and Indian reservations will not become havens for criminals or that Indian people have to suffer from second rate justice because the U.S. Department of Justice does not priortize justice in Indian country above other federal crimes because it is politically not expedient to "champion " Indian tribes.

BUREAU OF INDIAN AFFAIRS/CHILD WELFARE STRUCTURE


DEPARTMENT OF INTERIOR
ASSISTANT SECRETARY - INDIAN AFFAIRS (BIA)
DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS/ DIRECTOR (INDIAN EDUCATION PROGRAMS)
AREA OFFICES
AGENCIES
BIA POLICE
DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (TRIBAL SERVICES)
DIVISION OF LAW ENFORCEMENT SERVICES
PLANNING, OVERSIGHT AND EVALUATION STAFF
DIVISION OF EDUCATION ADMINISTRATION
DIVISION OF EDUCATION PROGRAMS
NORTH AND WEST AGENCY EDUCATION OPERATIONS
AREA AND POST-SECONDARY EDUCATION OPERATIONS
SOUTH AND WEST AGENCY EDUCATION OPERATIONS
NORTH AND WEST AGENCY EDUCATION OFFICES
POST-SECONDARY SCHOOLS AND AREA EDUCATION OFFICES
SOUTH AND WEST AGENCY EDUCATION OFFICES

IHS/CHILD WELFARE STRUCTURE


DEPARTMENT OF HEALTH AND HUMAN SERVICES
PUBLIC HEALTH SERVICE
IHS HEADQUARTERS ROCKVILLE, MARYLAND
MATERNAL CHILD HEALTH
MENTAL HEALTH
INDIAN AND TRIBAL GOVERNMENTS (CONTRACTED)
IHS AREA OFFICES
MATERNAL CHILD HEALTH
MENTAL HEALTH
SERVICE UNITS
HOSPITALS
HEALTH CLINICS
EXTENDED CARE FACILITIES
SERVICE UNITS
HOSPITALS
HEALTH CENTERS
OTHER CLINICS

IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

Cherokee Agency
Cherokee, North Carolina 28719

Senator Dennis De Concini
Special Committee on Investigations
Select Committee on Indian Affairs
901 Hart Senate Office Building
Washington, DC 20510-6450

SUPPORTING STATEMENT FOR THE CHEROKEE ELEMENTARY SCHOOL

by Patricia A. Jones

Cherokee Elementary School is a Kindergarten - sixth grade school located in the mountains of North Carolina on the Qualla Boundary, Eastern Band of Cherokee Indians Cherokee, N.C. The student enrollment is approximately 615 students with 93% of the student population being enrolled members of the Eastern Band of Cherokee Indians. Enrollment has increased steadily since 1985 as follows: 1984-85, 523; 1985-86, 533; 1986-87, 555; 1987-88, 611. Results of the California Achievement test indicate high academic achievement by Cherokee Elementary School students.

In the past serious problems have occurred in our school but these problems have not defeated us. The school and community have cooperated together with much hard work and determination to provide the best for the children. As these problems have been addressed and/or solved, Cherokee Elementary School has gained strength. Today it is stronger than any point in its history.

In May, 1988, Cherokee Elementary School was selected as one of 287 schools nationwide as a National School of Excellence by the United States Department of Education under the 1987-88 Elementary School Recognition Program. This is a very prestigious award and one few schools are able to attain. The following is an excerpt from the application guidelines:

> The purpose of the Elementary School Recognition Program is to identify and give public recognition to outstanding public and private elementary schools across the United States. Schools will be identified on the basis of their effectiveness in meeting their particular goals as well as the standards of quality applicable to elementary schools generally....
>
> For a school to be recognized, there must be clear evidence that its students are developing a solid foundation of skills in reading, writing, and mathematics. In addition, there must be evidence that school policies, programs, and practices foster the development of sound character, a sense of self-worth, democratic values, ethical judgment, and self-discipline....
>
> Further, for a school to be judged deserving of recognition, there should be strong leadership and an effective working relationship among the school, the parents, and others in its community. The

> school should have an atmosphere that is orderly, purposeful, and conducive to learning and good character. The school should attend to the quality of instruction and the professionalism of its teachers. There must be a strong commitment to educational excellence for all students and a record of progress in sustaining the school's best features and solving its problems.

We proudly fly our "Flag of Excellence." This award was not an accident. The honor was earned through the combined efforts of the school staff, students, parents, school board, tribal leaders, community organization, and individuals working together. Community involvement and open communication are seen as a high priority at Cherokee Elementary School. Parental involvement and participation is encouraged. Parental and community concerns and needs are addressed and seen as ways to improve. Many programs have been enhanced or implemented through the open communication process. These programs include: drug and alcohol program, personal safety program, safety education, health education and AIDS education. The services of many other community agencies are used to broaden the total educational process.

Cherokee Elementary School is a reflection of the community it serves. The Eastern Band of Cherokee Indians are a proud people whose history demonstrates a determination to succeed. We are proud of our students and the accomplishments realized and welcome those yet to be achieved.

Patricia A. Jones
2/15/89

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
PHOENIX AREA OFFICE
P.O. BOX 10
PHOENIX, ARIZONA 85001

IN REPLY
REFER TO:

Honorable Dennis DeConcini, Chairman
Special Committee of the
Select Committee on Indian Affairs,
Investigations
SH-901 Hart Senate Office Bldg.
Washington, D.C. 20510

Dear Senator DeConcini :

The Special Committee of the Select Committee on Indian Affairs held hearings on Child Abuse February 21,1989 and during the course of said hearings, Co-Chairman, the Honorable John McCain directed that I submit a report on why no administrative action had been taken regarding identified Bureau of Indian Affairs, Office of Education Programs supervisors associated with the Polacca Day School.

Enclosed is the requested report along with supporting documentation.

I would like to appologize for the delay in the submission of this report as it required obtaining documents from several agencies. If I can be of further assistance in this matter please contact me at your convenience.

Respectfully submitted,

Dr. Kenneth G. Ross
Assistant Director, South and West
Agencies, Office of Indian Education
Programs, Bureau of Indian Affairs

UNITED STATES GOVERNMENT

memorandum

DATE: March 9, 1989

REPLY TO ATTN OF: Assistant Director, South & West Agencies, Education Operations

SUBJECT: Response to the directive to report on why no administrative action has been taken against supervisors regarding child abuse on the Hopi reservation.

TO: The United States Senate Select Committee on Indian Affairs

The honorable Senator John McCain of Arizona requested that I submit for the record a report on why no administrative action had been taken against employees within the Office of Indian Education, Bureau of Indian Affairs who served in supervisory and critically sensitive positions and were directly identified in the testimony conducted by the United States Senate Select Committee on Indian Affairs, February 21, 1989.

I have prepared this report accordingly. The report follows the chronological time sequence of the individuals identified in testimony who were employed at the Polacca Day School and Hopi Agency, Office of Indian Education Programs.

To my knowledge the following account is an accurate and factual recapitulation of events and actions taken by persons named in the testimony of February 21, 1989.

Mr. Tom Goff, Principal at Polacca Day School on an unspecified date in 1985 received a verbal report from Mrs. Debbie Hood requesting that he, Mr. Goff conduct an administrative investigation of Mr.John Boone's conduct surrounding a recent incident where her sons clothing was removed from his person and washed by Mr. Boone.

It has been reported that Mr. Tom Goff complyed with this verbal request. He contacted his immediate supervisor Mr. Albert Sinquah, Hopi Agency Superintendent for Education to inquire of procedures to be followed in addressing the situation. Mr. Goff was verbally directed by Mr. Sinquah to contact the Phoenix Area Federal Labor Relations Officer, Mr. Ray Meadows. This directive reportedly was carried out. I have not been able to ascertain factually, however, it is reported that Mr. Goff placed Mr. Boone on administrative leave the day of the verbal request for an investigation into his conduct. Mr. Boone remained on administrative leave for a period of three days. On the third day of Mr. Goff's investigation it has been reported by Mr. Goff and Mr. Sinquah that the parent, Mrs. Debbie Hood advised Mr. Goff verbally that she overreacted to the situation and did not wish to pursue this issue any further. Mr. Goff and Mr. Sinquah jointly decided, that without a formal charge or factual evidenced to sustain a charge no further review of this situation would be taken and Mr. Boone was advised that he was to report back to his duties.

The United States District Attorney's Office in Phoenix, Arizona, I understand, is in possession of formal depositions detailing the actions taken by Mr. Goff and Mr. Sinquah. These depositions are not avaliable to me as they are material evidence regarding pending Federal Tort Claims action. The Senate Select Committee may pursue access to these records directly with the United States District Attorneys Office in Phoenix, Arizona.

The administrative investigation into the verbal charges against Mr. John Boone and subsequent dismissal of the investigation, leading to the reinstatement to duty status of Mr. Boone was administratively handled within the Hopi Agency, Office of Indian Education Programs. No verbal or written information regarding this incident was transmitted to my attention during the course of these events.

There was no administrative action proposed or taken against Mr. Tom Goff, according to his immediate supervisor Mr. Albert Sinquah due to Mr. Goff's action's to began and conduct an investigation of the verbally alleged child abuse incident. Mr. Sinquah reports in the attached sworn statement that Mr. Goff reacted to this situation on a professional level in doing so he consulted both the Phoenix Area Personnel, Federal Relations Officer and his immediate supervisor Mr. Sinquah who was the Hopi Agency Superintendent for Education. (see exhibit A).

The February 21, 1989 testimony will support the fact that I did provide the committee, upon direct response inquiring about the current status of Mr. Tom Goff, information regarding the investigation of the FBI into a February 16, 1989 verbal allegation of Sexual Solicitation of minors at Santa Rose Boarding School. The charges against Mr. Tom Goff are unsubstantiated as attested to by two separate investigates copies of wich are attached as (exhibits B & C).

Mr. Ted Eastwood was appointed as the Principal of the Polacca Day School for the 1987-1988 school year after being interviewed for the position, left vacant by the death of the previous principal. To my knowledge there was no evidence of record on Mr. Eastwood application papers or through prior employment references which revealed any history of alleged Alcohol/Substance Abuse.

Mr. Albert Sinquah in his sworn statement states, "I do not recall directly receiving a report that Mr. Ted Eastwood, Principal of Polacca was intoxicated on school grounds. Therefore, no administrative action was initiated or taken against him".

I, to the best of my knowledge, received no formal written information regarding allegations of Alcohol Abuse by Mr. Ted Eastwood during the period of his employment as Principal of Polacca Day School.

I became aware through general conversation with sources I cannot recollect, sometime in the spring in 1987, of rumors or unsubstantiated accusations that the Principal at the Polacca School, Mr. Ted Eastwood had a drinking problem which was impacting his work. I contacted, via telephone, Mr. Bobby Dean, Acting Agency Superintendent for Education and directed that he look into these unconfirmed charges and report his findings. He verbally reported back to me that he could not substantiate these rumors with but that he did talk to Mr. Eastwood about these rumors. Mr. Dean, as I have recently learned, did not document his actions nor communicate this incident to his successor Mr. Robert Jenkins at the time his detail was terminated. I have proposed adverse action to officially reprimand Mr. Dean for his failure to document this incident and for his failure to advise his successor of this incident. (see exhibit D).

On March 6, 1989 I became aware of a written charge against Mr. Eastwood for alcohol use while on duty which was filed with Mr. Robert Jenkins, while I was in the process of collecting documents to support this report.

I over heard conversation of the Hopi Agency staff who were compiling documentation on actions taken by the Agency relative Mr. Ted Eastwood indicating that a written statement of Ms. Elissa Mynhier, a teacher at Polacca to Mr. Robert Jenkins, Acting Agency Superintendent for Education was missing from Agency files. Later that day a copy was located and provided to me personally.

I immediately directed Mr. Jenkins via a phone call to his office in Tuba City, Arizona to prepare a written statement to be delivered to me at the Hopi Tribal offices by 1:00 o'clock on that day, March 6, 1989. This statement was to specifically cite what information Mr. Jenkins had relative to the charges against Mr. Ted Eastwood and what actions he took on these written charges. (see exhibit E).

I have proposed administrative action to suspend Mr. Jenkins for a period of 30 days for his failure to report this incident and his failure to act on the written compliant. (see exhibit F).

Mr. Lee Cargile was offered and accepted a contract for the 1987-1988 school year as a counselor for the Polacca Day School. Mr. Cargile was interviewed by the Polacca Day School board.

I have been recently informed that there was a verbal recommendation not to hire Mr. Cargile transmitted to members of the Polacca Day School board. This recommendation eminated from members of the Hopi High School board who collectively took action at the culmonation of his employment for the 1986-1987 school year to not renew his contract as counselor at the Hopi Junior-Senior High School.

I do not know if this information was discussed specifically at the time Mr. Cargile was being interviewed for employment at the Polacca Day School. I did not become aware of it until hearing verbal discussion on this issue in December of 1987, after a formal contract had been offered, accepted and Mr. Cargile was appointed.

On or about December 8, 1987 I received a telephone call from Mr. Patrick Hayes, Acting Phoenix Area Director. Mr. Hayes verbally advised me that Mr. Dan Jackson, Attorney, Phoenix Field Solicitors Office had advised him that Mrs. Jan Emmerich, victum witness coordinator for the United States

Department of Justice and Roger Dokken, Assistant United States attorney had conveyed concerns about their efforts to introduce a victum counseling program to the victums and families who were involved in the Molestation/Abuse caused by Mr. John Boone. The verbal information identified Mr. Lee Cargile, counselor at Polacca school, as in some manner interferring with the efforts of the United States Justice Department counselors.

I, in cooperation with Mr. Hayes, arranged a meeting to be held in his office on December 10, 1987. The meeting was held on the prearranged date to resolve the situation which was reported verbally by Mr. Dokken and Ms. Emmerich. I have since requested in writing written confirmation of charges from Ms. Emmerich, (see exhibit G). In attendance at this meeting were: Mr. Dan Jackson, Phoenix Field Solicitors office, Mr. Ted Quasula, BIA criminal investigator, Mr. Roger Dokken, U.S. District Attorney, Mr. Patrick Hayes, Acting Phoenix Area Director, BIA and myself.

At that time, I wqs not aware of any formal contact with the Hopi Agency Superintendent for Education. I have learned through Mr. Sinquah's sworn statement that he was contacted via telephone by Ms. Jan Emmerich, Victum Witness Coordinator, U.S. Department of Justice, Phoenix, Arizona on Friday, December 2, 1987. This communication advised Mr. Sinquah that Mr. Lee Cargile had contacted the U.S. District Attorney's office requesting payment for travel for the purpose of interviewing Mr. John Boone supposedly for the purpose of writing a book about Child Abuse on the Hopi reservation and that Mr. Cargile had plans to use a very sensitive form in collecting information concerning the John Boone issue.

Further, at that time, I was not aware of information that Ms. Jan Emmerich had contacted Ms. Christine Brown, Education Specialist and expressed her concern's regarding the Polacca School Child Abuse case. A copy of Ms. Christine Brown's report to the Deputy to the Assistant Secretary/Director-Indian Affairs (Indian Education Programs) is attached. (see exhibit H).

During the December 10, 1987 meeting we discussed the information surrounding Mr. Cargile which had been verbally reported. The decision reached during this meeting was that Mr. Cargile would be directed to not interfere or in any way or attempt to become involved with either clients, families or counselors associated with the Polacca Day School, Victum of Crimes Assistance counseling services of the United States Department of Justice.

I issued a verbal directive over the telephone, in the presence of all assembled parties to Mr. David Talayumptewa, Acting Agency Superintendent for Education, Hopi Agency to immediately inact this directive.

Further, discussion followed about the verbal allegations made against Mr. Cargile's conduct.

I contacted Mr. Talayumptewa via phone, again in the presence of all assembled parties and directed that he immediately conduct an administrative review of the claims that Mr. Cargiles had requested funds for gathering data and information with a view toward some future publication of a book and that he had distributed a questionnaire or interview document for obtaining data or information.

This verbal directive was carried out by Mr. David Talayumptewa. Copies of his administrative investigation findings and all personnel actions regardidng this matter are attached. (see exhibit I).

On December 14, 1987 Mr. Cargile was directed in writing to discontinue counseling services to those students who were identified as sexually abused re: the John Boone incident. (see exhibit J).

Mr. Lee Cargile was administratively reassigned by the Hopi Agency Superintendent of Education from the Polacca Day School to the Keams Canyon Boarding School. This action was taken to ensure that Mr. Carile would not be physically located where the U.S. Department of Justice Victums of Crimes Counseling services were conducted. This reassignment was effected on December 14, 1987.

No adminstrative action was initiated or taken against Mr. Lee Cargile by his immediate supervisor Mr. Ted Eastwood, nor by the second line supervisor, Mr. Albert Sinquah, Agency Superintendent for Education for lack of written evidence supporting the verbal claims about his conduct.

In the conduct of compling this report I learned through a written sworn statement signed by Mr. Sinquah that he had been contacted on December 2, 1987 by Ms. Jan Emmerich, Victum Witness Coordinator, U.S. Department of Justice and was verbally told that Mr. Lee Cargile had contacted that office and had requested funds to travel to New York to interview Mr. John Boone. This highly irregular and uncommonly bragen act had not been approved by Mr. Sinquah as the Agency Superintendent for Education nor to my knowledge by the Polacca Day School Principal, Mr. Ted Eastwood.

Mr. Sinquah as the Office of Indian Education Programs, Agency Superintendent for Education failed to follow up on this verbal report by not formally requesting a confirmation letter of the discussion held with Ms. Emmerich. Further, Mr. Sinquah failed to my knowledge, to communicate with Mr. Ted Eastwood about the impropriety of Mr. Cargile's actions, further he failed to document and notify his immediate supervisor regarding actions taken to rectify or address this highly irregular act of not obtaining permission to contact the offices of the U.S. Department of Justice. Due to his failure to use prudent administrative judgement in the matter I have officially reprimanded Mr. Sinquah (see exhibit K).

On December 10, 1987, while Mr. Sinquah was on leave, Mr. David Talayumptewa, Business Manager at Hopi Agency was the designated Acting Agency Superintendent for Education when a phone call directing that he personally investigate the verbal charges that Mr. Lee Cargile had improperly made contact with the offices of the U.S. Justice Department requesting money to travel to New York to interview Mr. John Boone. While Mr. Talayumptewa carried out the verbal directive given him he failed to document his actions for the record and to the best of my knowledge failed to notify Mr. Sinquah upon his return to duty status. Had this been done, written documentation would have existed upon which Mr. Sinquah could and should have taken some type of personnel action against either or both Mr. Ted Eastwood and Mr. Lee Cargile. This failure to immediately document and follow up administratively has formed the basis of an official letter of reprimand to Mr. Talayumptewa. (see exhibit L).

At the conclusion of the 1987-1988 school year the Polacca Day School Board officially acted to decline to offer a contract as counselor to Mr. Lee Cargile for the 1988-1989 school year. This action was supported by the newly Acting Agency Superintendent for Education, Mr. Bobby Deaw as Mr. Sinquah was administratively reassigned to the Office of Indian Education Programs, Gallup, New Mexico on January 04, 1988. (see exhibit M).

The Phoenix Area Personnel Management Office advised the Acting Hopi Agency Superintendent that the non-contract offer could not be implemented and directed that Mr. Lee Cargile be offered a contract for the 1988-1989 school year as counselor. This directive was carried out and Mr. Cargile accepted the contract offer. To my knowledge, the advise directed to the Acting Hopi Agency Superintendent for Education was provided by Ms. Ilene Johnson, personnel specialist responsible for post audit review of personnel actions taken at the local school and agency levels.

A formal review of this entire process has been officially requested to determine whether the directive given was appropriate under the Negotiated Agreement with the National Federation of Federal Employees and Bureau of Indian Affairs and the processes contained in 62 BIAM (see exhibit N).

Unsubstantiated information was received in January of 1989 that Mr. Cargile had reportedly been observed intoxicated on school grounds and that he was not satisfactorily performing his duties as counselor at Keams Canyon Boarding School.

I directed that an administrative investigation be conducted into these new allegations. This review team was composed of two individuals who possessed considerable experience in hom living, dormitory operations and who were permanently employed outside of the Hopi Agency. Their administrative investigation, findings and recommendations are attached as (see exhibit O).

Based upon this administrative report I directed the newly appointed and permanent Agency Superintendent for Education, Mr. John Wahnee to initiate adverse action against Mr. Lee Cargile. (see exhibit P). This action is currently being pursued.

It has become evident after analyzing the various incidences and activities that a major internal control weakness within the ranks of education managers is failure to document key actions relating to sensitive matters and the failure to keep supervisors or collegues advised through clear concise and factual communication. These identified weakness will be addressed through appropriate staff training, inservice programs and other applicable means.

This concludes my report to the Senate Select Committee on Indian Affairs as directed.

Dr. Kenneth G Ross

Assistant Director, S & W Agencies
Education Operations

I do hereby certify that the report submitted herin is true to the best of my knowledge.

Dr. Kenneth G Ross

Kenneth G. Ross
Assistant Director, S & W Agencies
Education Operations, Office of
Indian Education Programs,
Bureau of Indian Affairs

Sworn and signed before me this 13th day of March 1989.

Lila J. Freitag
Notary
Phoenix Maricopa, Arizona
My Commission Expires Dec. 18, 1990

EXIBIT A

UNITED STATES GOVERNMENT

memorandum

DATE: March 3, 1989

REPLY TO ATTN OF: Education Specialist, South & West Agencies, Education Operations

SUBJECT: Submission of a Written Report Ref: T. Goff, T. Eastwood, & L. Gargile

TO: Assistant Director, South & West Agencies, Education Operations

Attached per your instructions is a written report reference above, per your memorandum dated March 2, 1989.

Attachment

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

☆U.S.GPO:1982-0-361-526/7604

Ms. Debbie Hood, parent of a male child at the Polacca Day School reported that she questioned the fact that Mr. John Boone washed the clothes of her son.

Mr. Goff, called me at my office to inquire of procedures to be followed in reviewing the situation. Prior to December 8, 1987 the Office of Indian Education Programs did not have a child abuse reporting policy, for the reporting of suspected sexual abuse.

I was not fully aware of specific procedures to follow and directed Mr. Goff to contact the Phoenix Area Federal Relations Officer. To the best of my recollection Mr. Boone was put on administrative leave for a period of three days. During the three days, Mr. Goff, investigated the charge. It must be noted that Ms. Debbie Hood did not allow Mr. Goff to interview the child during this period.

On the third day of Mr. Goff's review of the charge, I was informed that the parent Ms. Debbie Hood reported to Mr. Goff that she over reacted to the situation and did not wish to pursue the issue any further. She also stated that a traditional medicine person had been consulted which helped her come to her decision.

Mr. John Boone was therefore advised to report to duty on the next working day.

Throughout this process the Phoenix Area Personnel Office, Federal Labor Relations Officer, Mr. Ray Meadows was kept informed. Upon notice of the parents wish not to pursue this issue any futher, it was jointly decided that without a charge there could be no further review of the situation.

It is therefore my opinion that Mr. Thomas Goff did properly investigate the alleged child abuse and his actions did not warrant any administrative action against him. He reacted to this situation on a professional level in doing so he consulted both the Phoenix Area Personnel, Federal Relations Officer and the Hopi Agency Superintendent for Education.

At this time there was no substantial evidence to confirm the charge I did not notify my immediate supervisor, Dr. Kenneth Ross, Assistant Director, S & W Agencies, OIEP.

I do not recall directly receiving a report that Mr. Ted Eastwood, Principal of Polacca was intoxicated on school grounds. Therefore no administrative action was initiated or taken against him.

Per telecon on Friday, December 2, 1987 with Ms. Jan Emmerick of the U.S. Attorney's Office in Phoenix, AZ, I was informed that Mr. Lee Cargile contacted the U.S. Attorney's office requesting payment for travel for the purposes of interviewing Mr. John Boone. Ms. Emmerick informed me that Mr. Cargile "wanted to write a book about it". I was also informed that he planned to use a form for use in gaining information concerning the John Boone issue. I called the Principal Mr. Ted Eastwood and requested that he immediately discuss the two issues with Mr. Cargile. Per notice via telephone from Mr. Eastwood, I was informed that such a request was not made by Mr. Cargile and that a questionnaire had not been distributed to staff and students at the Polacca Day School.

Per my consulting the school principal who interviewed Mr. Lee Cargile, I was provided sufficient notice that a request for funds to travel to interview Mr. Boone for purposes of writing a book and the distribution of a questionnaire in fact, did not take place and therefore did not require administrative action. On December 14, 1987 a memorandum directing Mr. Cargile to discontinue counseling services to students identified as sexually abused re: John Boone, was issued.

During the week of December 7-11, 1987, Mr. David Talayumptewa was designated Acting Superintendent for Education and was directed by Assistant Director, OIEP, Dr. Kenneth Ross, to follow-up on review of the charges. Mr. Talayumptewa has been requested to provide information related to his actions during this period.

I do hereby certify that the above report is true to the best of my knowledge.

A T Sinquah
Albert T. Sinquah
Education Specialist

Sworn and signed before me this
3rd day of March 1989.

Jennie M. Ferguson
Notary

My Commission expires August 11, 1990

EXIBIT B

U.S. Department of Justice

Federal Bureau of Investigation

201 East Indianola, Suite 400
Phoenix, Arizona 85012

In Reply, Please Refer to
File No. 198A-2281
Special Agent: Ader
Subject:

February 23, 1989

MAR 1989
PAPAGO AGENCY
OFFICE OF
INDIAN EDUCATION
PROGRAMS

Honorable Stephen M. McNamee
United States Attorney
District of Arizona
230 North First Avenue
Phoenix, Arizona 85025

Attention: Philip G. Espinosa
Assistant United States Attorney

Re: Thomas Goff;
Unknown Subjects - Victim;
Crime On Indian Reservation -
Sexual Molestation of a Minor

Dear Mr. McNamee:

The purpose of this communication is to confirm the conversation of Assistant U.S. Attorney (AUSA) Philip Espinosa of your office with Special Agent (SA) James Richard Ader of our office on February 22, 1989, at which time Mr. Espinosa was advised of the following information.

On February 16, 1989, Kenneth Whitehorn, Superintendent of Education for the Tohono O'Odham Nation, received a complaint that one Maria Ortega had complained to her mother, Norma Randall of Phoenix, while home on a weekend, that while she was residing at the Santa Rosa Boarding School, she had heard that the Principal, Thomas Goff, paid female students money for sexual favors.

Mr. Whitehorn, upon interview, advised he had known Thomas Goff for 10 years, and that he did not believe the allegations for a moment and this was the reason he asked for an impartial investigation, because he felt he could not be objective and that an impartial investigation would in fact prove that these allegations were false. Interview with School Counselor, Joseph Hayes, by the Federal Bureau of Investigation (FBI) and the Tohono O'Odham Police Department determined that Hayes, too, had known Goff for almost 10 years, and he also emphasized that he was certain the allegations were false, but that he was the first to hear of them from the mother of Maria Ortega, Norma Randall, during a routine visit to the

Randall home in Phoenix. Hayes further advised that Maria Ortega was a learning disabled student, was slow and very gullible, and that she was a "follower" and influenced by her peers, specifically, the other girls in the dormitory. Hayes further explained some background information regarding a recent letter writing between the 6th, 7th and 8th graders, where abusive things were put to paper, resulting in hurt feelings. Hayes stated that as a result of this, Goff, whom he described as an excellent administrator, called a meeting of all 11 girls involved, with Hayes present. Mr. Goff warned the girls that if this type of behavior continued, disciplinary hearings would be held with the girls' parents in attendance. Goff further advised all 11 girls attending this disciplinary meeting, that anyone who receives an abusive letter from any other student should bring that letter immediately to him or to Mr. Hayes. Hayes advised that one of the students, Roxanne Carlos, agreed to cooperate with the school authorities and adhere to the restrictions as set down by Mr. Goff. Hayes advised as a result of same, Roxanne Carlos was receiving a lot of pressure from the other students.

Interview with Maria Ortega determined she did in fact tell her mother she heard that Mr. Goff favored certain students at the school, and she told her mother the reason for this was because they provided him with sexual favors. She stated, however, she never told her mother this was done for money. She advised she had no firsthand knowledge of this behavior on the part of Mr. Goff, and only heard this from other girls in the dormitory. She advised the two girls she heard this from were June Lewis and Connie Castillo.

June Lewis, upon interview, advised she knew of no such behavior on the part of Mr. Goff, and that he was always a gentleman, even as a disciplinarian. She stated, however, following the meeting where the 11 girls were warned of disciplinary action, she and Connie did become irritated with the behavior of Roxanne Carlos and stated they felt she possibly was one of Mr. Goff's favorites. She admitted Roxanne did appear to be cooperating with school regulations. She advised she had no firsthand knowledge of any behavior of sexual impropriety on the part of Mr. Goff or Roxanne, or any other student at the school, and that such information was never normally discussed. She stated she was curious as to why Roxanne was his favorite, and when questioned as to the possibility that it could be because she obeyed the rules, she had no comment.

Roxanne Carlos, also interviewed by the FBI and the Tohono O'Odham Police Department, advised that following the warning by Mr. Goff, she cooperated with the school rules and that she now got along well with Mr. Goff and Mr. Hayes. She stated she did take a little peer criticism as a result of this cooperation. She stated she knew of no sexual impropriety on the part of Mr. Goff, and advised he was always fair, even when he was forced to discipline students. She stated he was always professional in his behavior.

Connie Castillo, student at Santa Rosa School, was also interviewed, and it was determined she had numerous disciplinary problems with Mr. Goff. Castillo admitted she did state in front of other girls that she was annoyed with the fact that Roxanne Carlos appeared to be one of Mr. Goff's favorites. She further advised she did make a statement speculating that maybe Mr. Goff liked Roxanne because Roxanne gave him sexual favors. She advised she was not serious in this statement, that there was no foundation for this statement, and she did not believe this was even possible. She advised she said it in a jesting fashion because of her anger for Mr. Goff and Roxanne. She further advised she did not believe that anyone even took her seriously, and that she was sorry she had caused any problems at the school. She further stated that Maria Ortega may have been present at the time she made this comment.

Interview with Thomas Goff determined his full denial of the allegations, plus a pledge of his full cooperation with Federal authorities to clarify same and vindicate this defamation to his character.

It is noted that upon a presentation of the above, Mr. Espinosa stated the facts presented did not constitute evidence of a Federal violation and he would decline same.

Sincerely yours,

Herbert H. Hawkins, Jr.
Special Agent in Charge

By:
Lawrence H. Bagley
Supervisory Senior
Resident Agent

EXIBIT C

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
OFFICE OF INDIAN EDUCATION PROGRAMS
TO'HAJIILEE COMMUNITY SCHOOL
P.O. BOX 438 STAR ROUTE
LAGUNA, NEW MEXICO 87026

[redacted]

MAR 1989
PAPAGO AGENCY
OFFICE OF
INDIAN EDUCATION
PROGRAMS

February 25, 1989

Dr. Ken Ross
Assistant Director South/West Agency
Office of Indian Education Programs
P. O. Box 1060
Gallup, New Mexico 87305

Dear Dr. Ross,

This is written to document the O.I.E.P. administrative investigation of the alleged sexual child abuse at Santa Rosa Boarding School on the Tohono O'Odham Nation.

On February 16, 1989 at approximately 2:00 p.m. Norma Randall called Santa Rosa Boarding School to talk with Thomas Goff, Principal. She indicated that her daughter, Maria Ortega, told her that some girls were saying that the Principal is offering money to some girls to go to bed with him. When confronted with the allegations he told the mother that she needed to talk with Ken Whitehorn, Superintendent. Mr. Whitehorn happened to be at the school thus was able to talk with her. He indicated to the mother that a full investigation would take place. The Superintendent notified his supervisor, Dr. Ken Ross. However, Dr. Ross was not available at the time thus Mr. Larry Holman was called who is Acting Assistant Deputy in Washington, D.C. When Dr. Ross was alerted he notified the F.B.I. and an investigation was instigated. In addition an O.I.E.P. administrative investigation was initiated.

Upon arrival at Tuscon, Arizona this investigator talked with Mr. Thomas Goff. He denied all the allegations and remarked about the devastation he felt when such allegations were made. Next to comment was Mr. Ken Whitehorn. He spoke with high regard of Mr. Goff. They have known each other for several years. He felt the accusations could not be true and extended his full cooperation to disclose the truth.

Contact was then made with Mr. Jim Ader, F.B.I. Agent, who investigated the case. A copy of the letter which summarizes his investigation written to the United States Attorney is attached to this letter.

On the trip to Santa Rosa Boarding School on February 24, 1989 contact was made with Sgt. Ray Price, Tohono O'Odham Police Department. Sgt. Price corroborated Mr. Ader's comments. The girls interviewed were honest and based on the information obtained there was no evidence that a crime was committed.

Upon arrival at Santa Rosa Boarding School, Joe Hayes, School Counselor, was interviewed. He received the complaint made by Norma Randall on a home visit. Norma Randall indicated her daughter, Maria Ortega shared with her that the Principal was asking girls to go to bed with them for money. Mr. Hayes called the school and had Ms. Randall report it to the Principal. Mr. Hayes has known Mr. Goff for three years and felt these accusations were incongruent with Mr. Goff's character. He indicated Mr. Goff is a good administrator and a busy man."

Maria Ortega was interviewed. She indicated making comments to her mother regarding what some of the girls were saying about Mr. Goff. She said she heard June Lewis and Connie Castillo say that Mr. Goff tried to do something like tried to feel some of the girls last year. She did not see Mr. Goff engaged in this type of behavior.

June Lewis denied making any comments in regard to Mr. Goff eliciting sexual favors from students. She, too, did not see Mr. Goff engaged in this type of behavior.

Connie Castillo was not in attendance at school thus a home visit was made with Mr. Hayes to conduct the interview. She denied making comments about Mr. Goff eliciting sexual favors from students and observing Mr. Goff in this type of behavior. She could not recap what she told the F.B.I. Agent.

Based on the comments of this investigation it is most likely that the conclusions reached by the F.B.I. are correct.

Sincerely,

Gloria J. Yepa

Gloria J. Yepa, Diagnostician
Eastern Navajo Agency

attachments

xc: Larry Holman
✓Ken Whitehorn

EXIBIT D

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Navajo Area Office
P. O. Box 1060
Gallup, New Mexico 87305

IN REPLY REFER TO:

Mr. Bobby Dean
Assistant Agency Superintendent
for Education, CE-1710-7
BIA-Shiprock Agency
P. O. Box 3239
Shiprock, New Mexico 87420

Dear Mr. Dean:

In accordance with the provisions of 62 BIAM 11.8, and 44 NAOM Appendix, "Conduct and Discipline Guide" issued 12-31-84, I have decided to issue you a Letter of Reprimand. The reason for this reprimand is as follows:

While serving on a Detail assignment to the Hopi Agency from 1-04-88 to 5-02-88, you were verbally requested to check out unsubstantiated rumors that Mr. Ted Eastwood, Principal of Polacca Day School, had been identified by unnamed parties to have participated in the violation of Federal Liquor Laws on an Indian Reservation. While you did meet with Mr. Eastwood about these rumors you failed to take action to document that such a meeting took place. You further failed to communicate this information to Mr. Robert Jenkins, who became your successor in the position of Agency Superintendent of Education of the Hopi Agency.

These actions are, in my mind, clearly indicative of careless performance, especially in light of the highly sensitive efforts the Bureau and U.S. Department of Justice are faced with relative to providing Child Abuse Rehabilitation Efforts at the Polacca Day School.

Your inattention to duties by failing to document your meeting with Mr. Ted Eastwood did not provide your successor with any written material upon which he could have taken action should similar future incidents have been reported.

Based on the above stated reasons, you are hereby issued a Letter of Reprimand for "Violation of Conduct and Discipline Guide," Items No. 3.b and 6.b. As provided in 62 BIAM 11.8, this letter will be retained in your Official Personnel Folder for a period not to exceed two years. Should you commit another offense of this nature during this time, a more severe penalty may be imposed.

If you question the merits of this action, you may seek relief as provided in the O.I.E.P. Grievance Procedure. If you choose to file a grievance, you must do so within 10 calendar days from the receipt of this letter. Your grievance must be submitted to me. If you desire further explanation of these procedures, you may contact Ms. Murlee Hollow Horn, Employee Relations Specialist, Navajo Area Office, Branch of Personnel, P. O. Box 1060, Gallup, New Mexico 87305 or telephone number 505, 863-9501, ext. 467.

You are requested to acknowledge receipt of this letter in the space provided on the enclosed copy and return it to the undersigned. Your signature merely shows you have received the letter and does not signify that you agree with its contents.

Sincerely,

Dr. Kenneth G. Ross

Assistant Director,
S&W Agencies, Education Operations

Enclosure

EXIBIT E

UNITED STATES GOVERNMENT
# memorandum

DATE: March 6, 1989

REPLY TO ATTN OF: Agency Superintendent for Education, Western Navajo

SUBJECT: Mr. Ted Eastwood - Principal, Polacca Day School

TO: FOR THE RECORD

On May 26, 1988, as Acting Hopi Agency Superintendent for Education, I visited the Polacca Day School Field Day activities.

While there, I witnessed the School Principal fall in a 100 yard racing event.

I immediately rush to where he was but by the time I got there, he was helped up and he proceed to go towards his home. I called his name but he did not seem to hear me.

Later that day, Ms. Elisa Mynhier, a teacher at Polacca Day School came to my office at Keams Canyon.

Ms. Mynhier indicated that she felt that Mr. Eastwood had been drinking alcoholic beverages that day and on other occasions during the school year. I told Ms. Mynhier to put the allegation in writing and submit to me. Ms. Mynhier (copy attached) transmitted the letter on May 27, 1988.

On May 26, 1988, according to my records, Mr. Ted Eastwood, submitted his resignation paper of Polacca Day School Principal to be effective June 30, 1988.

On June 7, 1988 while discussing other personnel items with Mr. Joseph Jarrett, Navajo Area Personnel Officer, I asked his advice on the Ted Eastwood incident and the written allegation of Ms. Mynhier. I also informed Mr. Jarrett that Mr. Eastwood had submitted his resignation to be effective June 30, 1988. I I informed Mr. Jarrett that I was proposing to take adverse action against Mr. Eastwood based on Ms. Mynhier's written statement.

Mr. Jarrett stated that by the time the adverse action was completed, Mr. Eastwood would have resigned and be gone. Mr. Jarrett advised that Mr. Eastwood should just be allowed to resign, however the written statement of Ms. Mynhier should be placed in Mr. Eastwood's personnel folder. I followed Mr. Jarrett's advice and therefore did not initiate adverse action against Mr. Eastwood.

OPTIONAL FORM NO. 10
REV. 1-80
GSA FPMR (41 CFR) 101-11.6
5010-114

GPO : 1984 O - 433-783

May 27, 1988

Dear Mr. Jenkins,

In response to our meeting on May 26, 1988 I am submitting this letter to substantiate our conversation.

Regarding the accident of Polacca Day School principal, Ted Eastwood, on the date mentioned above during the Polacca Day School Field Day activities. Mr. Eastwood appeared to be inebriated at the time of his fall. By the smell of his breath it was obvious that he had consumed some amount of alcohol.

There have been numerous other occasions during the school year when Mr. Eastwood has consumed alcohol, as evidenced by his breath, before and during working hours. In my opinion Mr. Eastwood has set a very poor example for our students and community members, both of whom have been heard to comment on his drinking problem.

I am submitting this letter with no ill feelings or malice towards Mr. Eastwood. It is my hope that this problem can be corrected without further damage to his reputation and/or the reputations of everyone who works at Polacca Day School.

Sincerely,

Elisa J. Mynhier

Elisa J. Mynhier

June 20, 1988

Education Specialist, Chap. I, Hopi Agency OIEP

Employee Donduct

Acting Supt. for Education, Hopi Agency

Per your request, I called Mr. Ted Eastwood, Principal, Polacca Day School to inform him that his request for leave from June 13-24, 1988 had not been approved. I had informed him that his leave was being denied due to the fact he had not submitted the following items:

1. FY '89 Special Education LEA Application
2. FY '89 Chapter I LEA Application

Upon confering with him, he became angry and very abusive with his vocabulary and hung up.

About 930 a.m., Mr. Eastwood came to the Hopi Agency Education Office with a letter of resignation, which was to be effective starting June 13, 1988. When he came in he appeared to be intoxicated because of the following reasons:

1. He was not making sense in what he was trying to say.
2. He was using very abusive language.
3. There was a strong odor of alchbol.
4. His eyes were dilated and glassy.
5. His coordination was abnormal.

I have had previous dealings with Mr. Eastwood where he has been professional, but he certainly was not on this day.

I informed Mr. Eastwood that he needs to submit his letter of resignation to the Superintendent's secretary so it could be logged. A few minutes later Mr. Eastwood then informed me that Mr. Talayumptewa, Business Manager had told him to take leave since Mr. Jenkins, Acting Superintendent had verbally approved his leave, and that he had not resigned.

I wanted to bring this to your attention in hopes that some type of action will be taken to address Mr. Eastwood's inappropriate behavior. As government employees we are required to adhere to 43 CFR Employees Responsibilities and Conduct. Is it not the supervisors' responsibility to reinforce these regulations? Hopefully something gets resolved, otherwise, such actions should be allowed for other employees.

Should you have any questions, please feel free to contact me.

Cindy G. Joe

EXIBIT F

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Navajo Area Office
P. O. Box 1060
Gallup, New Mexico 87305

IN REPLY REFER TO:

Mr. Robert Jenkins
Agency Superintendent for Education,
GM-1710-14
Office of Indian Education Programs
BIA-Western Navajo Agency
P. O. Box 3239
Tuba City, Arizona 874204

Dear Mr. Jenkins:

This is to inform you that I propose to suspend you for a period of thirty (30) calendar days from your position of Agency Superintendent for Education for the following reason:

1. Violation of 44 NAOM, Appendix issued 12-31-84 "Conduct and Discipline Guide," Item No. 3. Careless Performance or Negligence, b. when consequences are extreme, or an attempt is made to conceal defective work or there is an unauthorized attempt to remove or destroy work.

   Specifically: On March 6, 1989, I was in the office of the Hopi Agency Business Manager waiting for Mr. David Talayumptewa to complete the assemblying of documentation to be submitted by myself to the Senate Select Committee of Indian Affairs. I over heard discussion which revealed that a document was missing. This document contained information in support of a question specifically which was raised in the Senate Select Committee on Indian Affairs Hearings on Child Sexual Abuse regarding Mr. Ted Eastwood, Principal at Polacca Day School. It was mentioned that your claim this document was on file at the Hopi Agency. However, it could not be located.

   I immediately directed Mr. Talayumptewa to call you at your office in Tuba City and relay a directive for you to provide me a written statement of your knowledge and involvement related to written charges by a teacher against Mr. Ted Eastwood involving abuse of alcohol and to have you personally deliver this written statement to me at the Hopi Tribal offices.

   At approximately 1:00 p.m., March 6, 1989, you entered the Hopi Tribal offices and delivered personally to me a blue envelope which was sealed. I proceeded to open the document, inadvertently in the presence of Dr. Eileene Wasserman, Director of the Hopi Child Abuse Program. I made a verbal statement to the effect that you should expect to receive a blue envelope in the near future.

I read the document contents and this was the first time I was aware that you were physically present at the Polacca Day School on May 26, 1988 and observed Mr. Ted Eastwood, Principal of Polacca Day School fall during a foot race being conducted on the school grounds. You stated that, "I immediately rushed to where he (Mr. Eastwood) was but by the time I got there, he was helped up and he proceeded to go towards his home. I called his name but he did not seem to hear you."

Your statement further revealed that Ms. Elissa Mynhier, a teacher at Polacca Day School went to your offices in Keams Canyon and advised you that she felt that Mr. Eastwood had been drinking that day and on other occasions during the school year. Ms. Mynhier reduced her statements to writing, as requested by you, and submitted them to you on the next day, May 27, 1988.

You were aware of the extremely sensitive Child Abuse intervention counseling services being conducted for the victims and their families at the Polacca Day School by the Bureau of Indian Affairs, the Hopi Tribe and the U.S. Department of Justice.

You further are aware of the Federal Statutes Prohibiting Alcoholic Beverages on Indian reservations and the Office of Indian Educations Efforts to develop appropriate curriculum in this area, to provide training for staff and the need to model life styles of sobriety and responsibleness.

You failed to report this highly suspect behavior to your supervisor and further, failed to take any documented action against Mr. Ted Eastwood. In point of fact, you did nothing as a Key Federal official except to remain silent and allow Mr. Eastwood to work up until his last day of his contract June 30, 1988.

Your exclusive reliance on the advice of Mr. Joseph Jarrett, Navajo Area Personnel Officer led to National attention and considerable embarrassment to the Bureau of Indian Affairs and to the honorable profession of Education during the proceedings of the Senate Select Committee on Indian Affairs Investigation on Child Abuse. This error in judgment was critical as the servicing personnel office for the Hopi Agency is the Phoenix Area not Navajo Area. This is vitally important as the Hopi Agency Schools are covered by the NFFE Agreement and different procedures apply on Hopi in processing actions.

On Wednesday, March 1, 1989, I personally provided a verbal recapitulation of the humiliation I suffered during testimony before the Senate Select Committee on Indian Affairs Hearings and that I had been directed to provide to the Committee a report on why no administrative action had been taken against Education supervisors, inclusive of charges of drunkeness on the job against Mr. Ted Eastwood.

You remained silent, not offering to advise me of your direct involvement until directed to do on March 6, 1989.

The documentation relied upon to support this propsed action is available for your review in my office.

You will be allowed eight hours of official time to review the pertinent regulations and the material evidence used as documentation for this action and to prepare your response and secure affidavits in support of your answer, if any. You should make arrangements with me for use of official time.

You may answer this notice orally and/or in writing, or both, to Mr. Wilson Babby, Deputy to the Assistant Indian Affairs/Director (Indian Education Programs), M/C 3512, Main Interior Building, 18th and C Streets N.W., Washington, DC 20240. If you wish to make an oral reply, you may contact Ms. Sharon Garcia, Secretary, at 202/343-2123 for an appointment. You have the right to be represented by an attorney or anyone of your choosing, provided your choice does not constitute a conflict of interest or position. You and your representative, if any, are entitled to a reasonable amount of official time to present a reply. Consult with me to arrange for the necessary duty time. If you wish to be represented, give the name, address, and telephone number of your representative.

You will be allowed 10 calendar days from the date you receive this notice to submit your answer. Consideration will be given to extending this period if you submit a written request stating your reasons for desiring more time.

A final decision will not be made on this proposed action until after the time allowed for your reply. Any reply you make will be given careful consideration in making the final decision. You will be informed of the final decision in writing at the earliest possible date if you reply, or if you do not reply. The effective date of any adverse action finally decided upon will not be sooner than 30 calendar days following your receipt of this letter.

You will be continued in your present duty and pay status pending a final decision with regard to the above proposal, unless emergency conditions exist that may result in damage to government property or may be detrimental to the interest of the government, or injurious to you, your fellow workers, or ther general public.

If there is anything in this notice or about the proposed action that you do not understand and wish explained, contact Ms. Murlee Hollow Horn, Employee Relations Specialist, Navajo Area Office, Branch of Personnel, P. O. Box 1060, Gallup, New Mexico 87305 or telephone number 505/863-9501, ext. 467.

Please acknowledge receipt of this letter in the space provided on the enclosed copy and return it to the undersigned. Your signature does not mean that you agree with this letter, but merely shows that you received it.

Sincerely,

Dr. Kenneth H. Ross

Assistant Director,
S&W Agencies, Education Operations

Enclosure

EXIBIT G

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Office of Indian Education
South & West Agencies
P.O. Box 2060
Gallup, New Mexico 87305

IN REPLY REFER TO:

MAR 06 1989

Ms. Jan Emmerich
Victum Witness Coordinator
U.S. Department of Justice
230 N. 1st Avenue-Room 4000
Phoenix, Arizona 8025

RE: Request for Written Evidence

Dear Ms. Emmerich:

To the best of my knowledge, you contacted Mr. Albert Sinquah, Agency Superintendent for Education via telephone on Friday, December 2, 1987 advising him that Mr. Lee Cargile had contacted the U.S. Attorney's office requesting information or payment for travel for the purposes of interviewing Mr. John Boone. Further, that the purpose of this interview with Mr. Boone was because he, Mr. Cargile, intended to write a book about the Child Abuse on the Hopi reservation. Further, Mr. Sinquah was advised that Mr. Cargile had planned to or in fact had developed a highly suspect qeustionaire and planned or in fact had used it to gather information from abused victums and/or their families.

Additionally, on the same date December 2, 1987 you are reported as having called OIEP relating to Ms. Christine Brown, Education Specialist your concerns. In the report eminating from your verbal communications it is specifically stated that your personally had direct communications regarding Mr. Lee Cargile's activities to Mr. Albert Sinquah as early as the summer of 1987.

I have attached copies of a sworn statement by Mr. Sinquah dated March 3, 1989 and a copy of a memorandum dated December 3, 1987 from Ms. Brown to the Deputy to the Assistant Secretary/Director-Indian Affairs (Indian Education Programs).

Would you please review their contents and provide me with a written statement as to the accuracy of these respective documents.

Your expedition's response is sincerely appreciagted.

Sincerely,

Dr. Kenneth G Ross

Assistant Director, S & W Agencies,
Education Operations

EXIBIT H

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

CONFIDENTIAL

IN REPLY REFER TO:
Indian Education
Code 521

DEC - 3 1987

MEMORANDUM

To: Deputy to the Assistant Secretary/Director - Indian Affairs (Indian Education Programs)

From: Education Specialist/Child Abuse GAB

Through: Chief, Branch of Elementary and Secondary Education

Subject: Hopi Agency/Polacca School - Child Abuse Situation/U.S. Attorney's Report

Yesterday evening, the Victim Witness Coordinator of the Arizona U.S. Attorney's Office called OIEP to express the following concerns on the Polacca School Child Abuse case.

a. During the Summer of 1987, Mr. Lee Carlgile, the Polacca School Counselor approached the U.S. Attorney's office about providing him airfare to meet with a publishing company in New York. He told him the purpose was to write a book on the sexually abused students at Polacca School. The U.S. Attorney's office seriously questioned his motives along with his ability to perform adequate counseling services for the students. These concerns were discussed by the Victim Witness Coordinator with the Hopi Agency Superintendent for Education.

b. In September, the Polacca School Counselor began inappropriate discussions with the sexual abused victims asking them detailed questions about the specific acts. He has also distributed a inappropriate questionnaire to the students without parental or BIA permission. The U.S. Attorney's office stated his motives are gathering information for his book instead of service oriented for the students. They also conveyed serious concern about the professional ethics and ability of this particular counselor. All this information was reported to the Hopi ASE in the early Fall.

c. The U.S. Attorney's office contacted the Hopi ASE early this week because their consultants reported the Polacca School Counselor is still conducting the inappropriate activities with the students. The ASE's response to the situation has been one of indifference and nonresponsiveness. Out of frustration the staff person reported the incident to OIEP.

During the Gallup OIEP Child Abuse Training, the child abuse consultant and the OIEP representative spent some time talking with the Polacca School Counselor. His response to the basic questions we asked were professionally inappropriate. He did not appear to have the knowledge base nor the skill to deal with the sensitive and serious Polacca situation.

No professional one to one counseling service has reached the majority of Polacca students as of yet. To allow the current situation to continue may further injure the BIA students.

EXIBIT I

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P.O. BOX 568
Keams Canyon, Arizona 86034

IN REPLY REFER TO:

March 3, 1989

TO: Dr. Kenneth Ross, Assistant Director
South and West Agencies/OIEP

FROM: Business Manager,
Hopi Agency/OIEP

SUBJECT: Information re: Mr. Lee Cargile

Pursuant to our conversation on March 3, 1989 the following is provided re: the above subject to the best of my recollection.

On or about December 8, 1987, I received a telephone call from your office indicating that, since I was assigned the Acting Superintendent for Education, I should be available for a telephone conference call on December 10, 1987. However, prior to the telephone conference I was to meet with Mr. Cargile and ask him to respond to allegations that he was requesting funds from the U.S. Attorneys Office for his personal use and that he was circulating a questionnaire for his personal use (the allegation was that he was in the process of writing a book re: the Polacca Day School incident). I met with Dr. Cargile on or about December 9, 1987 and inquired about the above allegations, he emphatically denied ever developing or using a questionnaire to gather information, for his personal use or any other use, relating to Boone. He indicated that he did request from a staff member of the U.S. Attorneys Office funds to take a trip to New York to interview Boone. He indicated that his purpose was to attempt to locate video tapes that the police could not locate and that some research needed to be conducted in identifying characteristics of psdophiles to assist in preventing any future incidents of child molestation.

I was instructed to provide this information to participants of the teleconference to be held on or about December 10, 1987 and that I would be given further direction in what action to take.

On December 10, 1987 a telephone conference call was conducted with the following participants: Dr. Kenneth Ross, OIEP, representatives from the Field Solicitors Office, representatives from the U.S. Attorneys Office and the Acting Assistant Area Director's Office was also present.

During this call I relayed the above information to the participants. After a lengthy discussion I was directed to immediately remove Mr. Cargile from Polacca Day School, his duty station. That he was to cease and desist in providing any further counseling to the victims of Mr. John Boone. I immediately wrote the memorandum (see attached) and had Mr. Teddy Eastwood deliver the memo to Mr. Cargile. He was then assigned to the Keams Canyon Boarding School for the remainder of the school year.

I was also directed to informally take necessary action to determine if a questionnaire did exist and if it had indeed had been circulated in Polacca. I indicated to the participants that I was hesitant to due to the confidentiality and sensitivity of the issue and I was not familiar with the victims of Mr. John Boone. I was instructed to do what I could to determine if the questionnaire existed and if Dr. Cargile had actually used it.

After seeing the list of the victims, I recognized one name whom I knew. I then, at a couple of social gatherings, talked to the parents/relatives generally about the boone incident and attempted to ascertain if they had ever seen a questionnaire being circulated in Polacca, no mention was ever made of the questionnaire. Since the direction was to attempt to determine informally whether the questionnaire did or did not exist, I did not submit a written report of my findings. I did however on December 16, 1987, report the activities that occurred to Mr. Albert T. Sinquah, Superintendent for Education.

Although the allegations persists, to date no one has been able to produce the questionnaire.

David Talayumptewa

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P. O. Box 158
Keams Canyon, Arizona 86034

IN REPLY REFER TO:

December 14, 1987

TO: Lee Cargile, PHD
Counselor

THRU: Ted Eastwood, Principal

FROM: Superintendent for Education

SUBJECT: Counseling Services for Sexually Abused Students

Effective today, December 14, 1987, you are directed to discontinue counseling services to those students who have been identified as sexually abused re: the John Boone incident.

This action has been taken per direction from the Assistant Director, South and West Agencies, Gallup, New Mexico.

Mr. Eastwood and you should meet as soon as possible to form a schedule of academic counseling at the Polacca Day School. Further, a new schedule of itenerant visitation to PDS will be formulated between you and the PDS Principal.

If you have any questions, you can contact me at 738-2262.

Albert T. Sinquah

CC. Dr. Ken Ross
Assistant Director
South & West Agencies

NOTIFICATION OF PERSONNEL ACTION

Name (Last, First, Middle): CARGILE, LEE LANE

2. SSN: 464-28-1207

4. Date of Birth: 11-23-23

1 | 6. Serv. Comp. Date (Leave): 06-16-86

7. Tenure: 0

8. Retirement: 2

1 | 1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt./30% Comp.

10. FLSA: E (E—Exempt N—Nonexempt)

Sex: M

12. Citizenship: 1 (1—US 8—Other)

X | INELIGIBLE FOR FE(.I COVERAGE

Effective Date: 06-16-86

15. Annuitant Ind.: 9

16. Work Schedule: F (F—Full-time P—Part-time I—Intermittent)

17. (Reserved for OPM Use)

171 | 19-B. Nature of Action: EXC APPT NTE 08-1 -86

19-A NOAC | 19-B. Nature of Action

Auth Code: ZLM | 19-D. Authority: P. L. 95-561

19-C Auth Code | 19-D. Authority

19-E Auth Code | 19-F. Authority

FROM: Position Title and Number

27. TO: Position Title and Number

COUNSELOR

H650100 -04 514

Name and Location of Employing Office

28. Name and Location of Employing Office

PHOENIX AREA H>QTRS
HOPI AGENCY KEAMS CANYON
PHOENIX, ARIZONA

29. Pay Plan & Occupational Code	30. Grade or Level	31. Step or Rate	32. Salary	33. Pay Basis
CY 1710	03	21	$13.58	PH

Duty Station: POLACCA, NAVAJO, AZ

35. Position Occupied: 2 (1—Competitive 2—Excepted 3—SES General 4—SES Career Reserved)

36. Appropriation Code (Optional)

Remarks

CK-DIG: 5

SUBJECT TO RECEIPT OF PF FOR PRIOR FEDERAL SERVICE
INELIGIBLE FOR HEALTH ENEFITS.
APPOINTMENT AFFIDAVIT XECUTED 06-13-86
CONTRACT COVERS PERIOD 06-16-86 TO 08-14-86.

6-16-86
to
8-14-86

RECEIVED
JUL 1986
HOPI AGENCY
EDUCATION

Approving Official: SONNEL OFFICER

B. Date: 06-16-86

A251534RR1161L

Employing Department or Agency: NT-BUR OF INDIAN AFF

39. FPMIS Data

A. Supv. or Nonsupv. Ind.	B. VEV IND	C. PRO	D. Barg. Unit Status	E. Functional Class
8	N	0	0065	00

F. Educational Level	G. Year Degree Attained	H. Academic Discipline	I. Agency Code
			IN06

J. Location Code	K. BON	
04-0382-017	1534	[redacted]

	N.	O.	P.	Q.
[redacted]			5614314	

21(

Standard Form 52
Rev. January 1984
U.S. Office of Personnel Management
FPM Chapter 296

REQUEST FOR PERSONNEL ACTION

Part I—Requesting Office— Also complete Part II, Items 1 and 20-34 as necessary

A. For Agency Use

B. For Additional Information Call (Na… …nd Telephone Number)

C. Personnel Action Requested: EXC. APPT NTE: 08-14-86

D. Proposed Effective Date: 06-16-86

E. Requested by (Signature, Title, and …te)

F. Position Action Requested

G. Proposed Effective Date

H. Approved by (Signature, Title, and …): Sara R. Mo… …r, Acting Superintendent …or Education

I. Remarks by Requesting Office (Note Supervisors: If action requested is employee resignation and if you know of additional or conflicting reasons …he resignation, please state these facts on a separate sheet and attach to SF 52.) Education Employment Contract attached.

Part II—For Preparation of SF 50

1. Name (Last, First, Middle): CARGILE, Lee Lane
2. SSN: 464-28-1207
3. Position Sensitivity (Opt)
4. Date of Birth
5. Veteran Preference: 1—None 2—5 Pt 3—10 Pt Disab 4—10 Pt Comp 5—10 Pt Other 6—10 Pt /30% Comp
6. Serv. Comp. Date (Leave)
7. Tenure
8. Retirement
9. FEGLI
10. FLSA: E—Exempt N—Nonexempt
11. Sex
12. Citizenship: 1—US 8—Other
13. Comp. Level (Ep
14. Effective Date: 06-16-86
15. Annuitant Indicator: 1—Reempl Ann-CS 2—RETD 3—RETM 4—RETD & CS 5—RETM & CS 9—Not Applicable
16. Work Schedule: F—Full-time P—Part-time I—Intermittent G—FT Seasonal Q—PT Seasonal J—INT Seasonal
17. (Reserved for OPM Use)

18-A. NOAC: 171
18-B. Nature of Action: EXC APPT NTE 08-14-86
18-C. Auth. Code: ZLM
18-D. Authority: P.L. 95-561
18-E. Auth. Code
18-F. Authority
19-A. NOAC
19-B. Nature of Action
19-C. Auth. Code
19-D. Authority
19-E. Auth. Code
19-F. Authority

20. FROM: Position Title and Number: Counselor, 561.4314T

27. TO: Position Title and Number

21. Name and Location of Employing Office:
Bureau of Indian Affairs
Phoenix Area Headquarters
Hopi Agency, Hopi Jr/Sr High School
Keams Canyon, Arizona

28. Name and Location of Employing O…e

22. Pay Plan & Occupational Code: CY-1710
23. Grade or Level: 03
24. Step or Rate: 10
25. Salary: $11.67
26. Pay Basis: PH
29. Pay Plan & Occupational Code
30. Grade or Le…
31. Step or Rate
32. Salary
33. Pay Basis
34. Duty Station: H65-22, Polacca, Navajo, Arizona
35. Position Occupied: 1—Competitive 2—Excepted 3—SES …neral 4—SES …reer Reserved
36. Appropriation Code (Optional)

37. Remarks: Ineligible for health benefits, life insurance, civil service retirement, sick leave and school vacation leave. Contract covers period from 06-16-86 through 08-14-86. Appointment will not be renewed.

CONTINUED ON REVERSE SIDE

52-113

Previous Edition Usable
NSN 7540-01-109-8814

tandard Form 52
ev. January 1984
.S. Office of Personnel Management
PM Chapter 296

REQUEST FOR PERSONNEL ACTION

art I—Requesting Office—Also complet art II, items 1 and 20-34 as necessary

For Agency Use

B. For Additional Information Call (Nar nd Telephone Number)

Personnel Action Required: EXC APPT NTE: 08-14-86

D. Proposed Effective Date: 06-16-86

E. Requested by (Signature, Title, and ate)

Position Action Requested

G. Proposed Effective Date

H. Approved by (Signature, Title, and I

Sara R Mos r, Acting
Superintendent or Education

Remarks by Requesting Office (Note Supervisors: If act pursued is employee resignation and if you know of additional or conflicting reasons f e resignation, please state these facts on a separate shee and attach to SF 52.) Education ployment Contract attached.

art II—For Preparation of SF 50

Name (Last, First, Middle): CARGILE, Lee Lane

2. SSN: 464-28-1207

3. Position Sensitivity (OO)

4. Date of Birth

Veteran Preference: ☐ 1—None 2—5 Pt 3—10 Pt Dis 4—10 Pt Co 5—10 Pt Other 6—10 Pt (30% Comp

6. Serv. Comp. Date (Leave)

7. Tenure

8. Retention ☐

FEGLI ☐

10. FLSA ☐ E—Exempt N—Nonexempt

11. Sex

12. Citizenship ☐ 1—US 8—Other

13. Comp. Level

Effective Date: 06-16-86

15. Annuitant In ☐ 1— 2— r Ann CS 3—RETM 4—RETD & CS 5—RETM & CS 9—Not Applicable

16. Work Schedule ☐ F—Full time P—Part time I—Intermittent G—FT Seasonal Q—PT Seasonal J—INT Seasonal

17. (Reserved for OPM Use)

A. OAC: 171

18-B. Nature of Action: EXC APPT NTE 0 14-86

C. Auth. Code: ZLM

18-D. Authority: P.L. 95-561

E. Auth. Code

18-F. Authority

19-A. NOAC

19-B. Nature of Action

19-C. Auth. Code

19-D. Authority

19-E. Auth. Code

19-F. Authority

6. FROM: Position Title and Number: Counselor, 561.4314T

27. TO: Position Title and Number

1. Name and Location of Employing Office:
Bureau of Indian Aff rs
Phoenix Area Headquar ers
Hopi Agency, Hopi Jr/ r High School
Keams Canyon, Arizon

28. Name and Location of Employing Off

Pay Plan & Occupational Code	23 Grade or Level	24 Step or Rate	Salary	26 Pay Basis	29 Pay Plan & Occupational Code	30 Grade or Leve	1 Step or Rate	32 Salary	33 Pay Basis
CY-1710	03	10	$11.67	PH					

Duty Station: H65-22, Polacca, Nava , Arizona

35. Position Occupied ☐ 1—Competitive 2—Excepted 3—SES G eral 4—SES C er Reserved

36. Appropriation Code (Optional)

Remarks

Ineligible for health b nefits, life insurance, civil se vice retirement, sick leave and school vaca ion leave. Contract covers peri d from 06-16-86 through 08-14-86. Ap intment will not be renewed.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
EDUCATION EMPLOYMENT CONTRACT

Short Term CONTRACT
(Type of Contract)

Hopi Jr/Sr High SCHOOL
(Location)

This is a contract of employment between the Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs designated representative for the Hopi Jr/Sr High School at Polacca, Arizona ______________ and Lee Lane Cargile, herein called employee. BOTH PARTIES MUTUALLY AGREE:

1. The employee shall be employed by the Office of Indian Education Programs (OIEP) for a period from June 16th, 1986 to August 14t, 1986 as Counselor at Hopi Jr/Sr High School.

2. The employee shall, during the term of employment, perform duties pertaining to the position and the duties assigned by the supervisor.

3. This contract and the parties hereto are and shall continue to be subject to applicable laws and regulations of the Federal Government and the State in which the position is located and to the rules and regulations of the Department of the Interior, Bureau of Indian Affairs, the OIEP, and the rules and regulations of the local school and the local school board.

4. Subject to the provisions of the applicable approved budget, the employees shall, during the term hereof, receive a salary of $11.67 per hour less required or authorized deductions.

5. In the event that a pre-employment or post-audit review of the qualifications of the employee shows that the employee is not suitable or qualified for the position, herein, this contract may be terminated immediately by the OIEP.

6. This contract may be terminated by the OIEP during the school year and prior to its expiration date in accordance with the rules and regulations of the OIEP as set forth in 62 BIAM. Failure to renew this contract does not constitute termination for cause by OIEP or for other reasons.

DESIGNATED REPRESENTATIVE OIEP Sara R Monongy / 6/13/86
(Signature) (Date)
for Martin W. Johnson, Principal
(Title)

EMPLOYEE: Lee L. Cargile / 6-13, 1986
(Date Signed)

CONCURRED BY: / 6-16, 1986
(School Board Chairman) (Date Signed)

January 1984
Office of Personnel Management

NOTIFICATION OF PERSONNEL ACTION

3. SSN
4. Date of Birth 11-23-23
6. Serv. Comp. Date (Leave)
1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt./30% Comp.
10. FLSA E—Exempt N—Nonexempt
12. Citizenship 1—US 8—Other
15. Annuitant Indicator
16. Work Schedule F—Full-time P—Part-time I—Intermittent
17. (Reserved for OPM Use)
18-B. Nature of Action
19-A. NOAC
19-B. Nature of Action
18-D. Authority
19-C. Auth. Code
19-D. Authority
18-F. Authority
19-E. Auth. Code
19-F. Authority
Position Title and Number
27. TO: Position Title and Number
Name and Location of Employing Office
38. Name and Location of Employing Office
Pay Plan & Occupational Code GY 171.
23. Grade or Level
24. Step or Rate
28. Pay Basis
29. Pay Plan & Occupational Code
30. Grade or Level
32. Salary
33. Pay Basis
35. Position Occupied 1—Competitive 2—Excepted 3—SES General 4—SES Career
36. Appropriation Code (Optional)

posted 11/22/86

39. FPMIS Data
Approving Official
C. Date
A. Supv. or Manager Ind.
B. VEV Ind.
D. Barg. Unit Status
E. Functional Class
Signature/Authentication of Approving Official
Ray G. M[illegible]dowz
F. Educational Level
G. Year Degree Attained
Academic Discipline
I. Agency Code
J. Location Code
K. SON 1534
[redacted]
Employing Department or Agency
[redacted]
N.
P. 5/14/11
Q.
[redacted]

REQUEST FOR PERSONNEL ACTION

Part I Requesting Office

C. Personnel Action Requested

TERMINATION-EXP OF A T

D. Proposed Effective Date

08-14-86

SUPERINTENDENT FOR EDUCATION

FINAL SAL CLEARANCE REPORT AND COPY OF JAMES F. RICK FORM ATTACHED.

Part II For Preparation of SF 50

1. Name (Last, First, Middle)

CARGILE, LEE LANE

2. SSN

464-28-1207

4. Date of Birth

11-03-23

11. Sex

M

12. Citizenship

1

14. Effective Date

08-14-86

16A NOAC

355

16B Nature of Action

TERMINATION-EXP OF APPT.

20. FROM: Position Title and Number

COUNSELOR, 561.4314T

21. Name and Location of Employing Office

BUREAU OF INDIAN AFFA S
PHOENIX AREA HEADQUAR RS
HOPI AGENCY, JR/SR HI SCHOOL
KEAMS CANYON, ARIZONA

CY-1710	03	21	$13.58	PH

26. Duty Station

POLACCA, NAVAJO, ARIZ A

27. Remarks

FORWARDING ADDRESS: 159 CR 203
RANGO, COLORADO 81301

CONTINUED ON REVERSE SIDE

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P. O. Box 158
Keams Canyon, Arizona 86034

IN REPLY REFER TO:

Memorandum

To: Phoenix Area Office, Attn: Delores Harjo, Personnel

From: Personnel Assistant [illegible]

Subject: Personnel Processing Documents for Lee L. Car[illegible] e

SSN: 464 / 28 / 12[illegible]

P.L. 95-561 Contract Position: Counselor, 88 [illegible]43147

Attached are the following processing documents on the above named individual:

- ☑ SF-52, Request for Personnel Action
- ☑ SF-171, Personal Qualifications Statement
- ☐ Form 5-4432, Certificate of Indian Blood
- ☐ Employment Contract - Short-Term
- ☑ Roster and Certificate of Eligibles
- ☑ Rating Sheet
- ☑ Form 5-6233, Position Description Cover & Position Description
- ☑ Vacancy Announcement
- ☑ Arizona Certification
- ☑ Copies of Official Transcripts
- ☑ SF-61, Appointment Affidavits
- ☑ SF-61B, Declaration of Appointee
- NA SF-78, Certificate of Medical Examination
- NA SF-85, Data for Nonsensitive or Noncritical-Sensitive Position
- NA SF-87, Fingerprint Chart
- NA SF-144, Statement of Prior Federal and Military Servi[illegible]
- ☐ SF-177, Statement of Physical Ability for Light Duty Work
- ☑ SF-181, Race and National Origin Identification
- NA SF-2809, Federal Employees Health Benefits Program
- NA SF-2817, Election, Declination, or Waiver of Life Insurance Coverage
- ☑ W-4, Employee's Withholding Allowance Certificate
- ☑ EDC-14, Salary Check Mailing Address Form
- NA DD-214, Verification of Military Service

OTIFICATION OF PERSONNEL ACTION

ACIL, LEE [illegible]	5. SSN	[illegible]
1—None 5—10 Pt. Disab. 6—10 Pt. Comp. 8—10 Pt. Other 9—10 Pt./30% Comp.	6. Serv. Comp. Date (Leave)	[illegible] 1
COVERED BY [illegible]	10. FLSA	E—Exempt N—Nonexempt
-01- 7	13. Work Schedule	[illegible]
5—RETM 6—RETO & CS 7—RETM & CS 9—Not Applicable		

1	11-23-23
C	K
Y	T

ADMINISTRATIVE [illegible]

11-3-8[illegible]

to

5-29-17

Position Title and Number	27. TO: Position Title and Number
COUNSELOR H350100 -0413[illegible]	COUNS[illegible] H35010C -041[illegible]
PHOENIX AREA HDQTRS HOPI AGENCY KEAMS CAN[illegible] PHOENIX, ARIZONA	PHOENIX AREA HQ TRS HOPI AGENCY KEA[illegible] CANYON PHOENIX, ARIZON[illegible]

GY 1710	02	10	$12.02	PH	GY 1710	02	10	$12.02	PH	

KEAMS CANYON, NAVAJO, [illegible]

1—Competitive
2—Excepted

CK-DIGI 5

ODE "K" IN BLOCK 3 INDICATES COVERAGE BY FERS AND FICA
ORRECT ITEM 6 FROM C.

Posted
3/20/88
[illegible]

OCT 1987
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INDIAN
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Approving Official	B. Date	30. FPMS Data				
HORIZING OFFICIAL	07-19-87	A. Supr. or Manager Ind.	B. VEV IND	0	C065	DC
		0	9		I. Agency Code IN06	
Nancy L. Jurean	[illegible]	J. Location Code 04-0185-017			K. SON 1536	
NT OF THE INTERIOR [illegible]					P. 1414135	

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Previous Edition Usable
NSN 7540-01-110-6907

NOTIFICATION OF PERSONNEL A.

CARGILE, LEE LANE

464-28-1207

1

11-23-23

Veteran Preference

2

1-None 3-10 Pt. Disab. 5-10 Pt. Other

2-5 Pt. 4-10 Pt. Comp. 6-10 Pt./30% Comp.

06-29-81

Tenure: 0

C

C

1-Exempt 2-Nonexempt

Sex: M

1

Effective Date: 01-04-87

9

Work Schedule: G

F-Full-time P-Part-time I-Intermittent G-FT Seasonal Q-PT Seasonal J-INT Seasonal

Nature of Action: 894 PAY ADJ

Authority: ZLM PUBLIC LAW 95- 61

To: Position Title and Number

COUNSELOR

H650100 04135

Name and Location of Employing Office

PHOENIX ARE . HDQTRS

HOPI AGENCY KEAMS CANYON

PHOENIX, AR ZONA

CY 1710	03	1	$11.67	PH	CY 1710		3	10	$12.02

Duty Station: KEAMS CANYON, NAV JO, AZ

Position Occupied: 2

1-Competitive 2-Excepted

Remarks

Approval

Title of Approving Official

Signature/Authentication of Approving Official

A251534HHH0710

B N 0 0065

Agency Code: IN06

04-0255)17 1534

Employing Department or Agency: INT-BUR OF INDIAN AF

1-Employee Copy

NOTIFICATION OF PERSONNEL ACTION

.RGILE, LEE LANE

2. SSN 464-28-1207

1

4. Date of Birth 11-23-23

6. Serv. Comp. Date (Leave) 06-29-81

0

8. Retirement K

COVERED BY BASIC FE LI

10. FLSA E

M

12. Citizenship 1

-0 -87

16. Annuitant Indicator 9

18. Work Schedule G

17. (Reserved for OPM Use)

3 CHG IN RETIREMENT LAN

P.L. 99-335

OUNSELOR

650100 -04135

27. TO: Position Title and Number

COUNSELOR

H650100 -041 5

HOE IX EA HDQTRS
OPI AGENCY KEAMS CANY N
HOENIX, ARIZONA

28. Name and Location of Employing Office

PHOENIX AREA HD TRS
HOPI AGENCY KEA S CANYON
PHOENIX, ARIZON

Y 1710 | 03 | 10 | $11.67 | PH

CY 1710 | 03 | 10 | $11.67 | PH

EAMS CANYON, NAVAJO, Z

35. Position Occupied 2

CK DIG: 3

DE "K" IN BLOCK 8 IND CATES COVERAGE BY FERS AND FICA
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1987 JUN 18 P 1:20
HOPI AGENCY

ORIZING OFFICIAL

Date 05-19-87

Gary L.

A251534HH2075R

39. FPMIS Data

A. 8

B. N

0

D. 0065

E. 00

I. Agency Code IN06

J. Location Code 04-0255-017

K. SON 1534

[redacted]

[redacted]

P. 5614135

T-BUR OF INDIAN AFF

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ıd Form 50-B
anuary 1984
ffice of Personnel Management
Chapter 296

NOTIFICATION OF PERSONNEL ACTION

e (Last, First, Middle)
RGILS, LEC LAN

2. SSN
-1307

ition Sensitivity Code
1

4. Date of Birth
11-25-23

ran Preference
1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt./30% Comp.

6. Serv. Comp. Date (Leave)
1

enure
3

8. Retirement
K

LI
COVERED BY

10. FLSA
E—Exempt N—Nonexempt

ex
M

12. Citizenship
1
1—US 8—Other

13. Comp. Level Date

ective Date
-03-87

15. Annuitant Indicator
1—Reemp 2—RETD in CS 3—RETM 4—RETD & CS 5—RETM & CS 9—Not Applicable

16. Work Schedule
F—Full-time P—Part-time I—Intermittent

T Seasonal
T Seasonal
NT Seasonal

17. (Reserved for OPM Use)

19-B. Nature of Action
CHG IN TINUR

19-A NOAC

19-B. Nature of Action

19-D. Authority
REC 351.502

19-C. Auth Code

19-D. Authority

19-F. Authority

19-E. Auth Code

19-F. Authority

ROM: Position Title and Number
COUNSELOR
650100 -04125

27. TO: Position Title and Number
COUNSELOR
H 650100 -041

ame and Location of Employing Office
PHCENIX AREA HDQTRS
HOPI AGENCY KEAMS CANY
PHCENIX, ARIZONA

28. Name and Location of Employing Office
PHOENIX AREA HDQ RS
HOPI AGENCY KEAM CANYON
PHOENIX, ARIZONA

Pay Plan & Occupational Code	23. Grade or Level	24. Step or Rate	25. Salary	26. Pay Basis
CY 1710	03	13	12.56	PH

29. Pay Plan & Occupational Code	30. Grade or Level	31. Step or Rate	32. Salary	33. Pay Basis
CY 1710	03	13	$12.56	PH

Duty Station
KEAMS CANYON, NAVAJO, AZ

35. Position Occupied
1—Competitive 2—Excepted 3—SES General 4—SES Career

eserved

36. Appropriation Code (Optional)

emarks
CK-DIG: 5
OMPLETED ONE YEAR OF CURRENT CONTINUOUS SERVICE.
ODE "K" IN BLOCK 8 INDICATES COVERAGE BY FERS AND FICA

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3/22/88
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pproval

e of Approving Official
HORIZING OFFICIAL

B. Date
11-03-87

ature/Authentication of Approving Official
Mary L. Ja ean
A251334HH7

mploying Department or Agency
NT-BUR OF INDIAN AFF

39. FPMIS Data

A. Supv. or Manager. Ind.
8

B. VEV IND
N

PRD
0

D. Barg. Unit Status
0065

E. Functional Class
00

F. Educational Level

G. Year Degree Attained

Academic Discipline

I. Agency Code
INC6

J. Location Code
04-0255-017

K. SON
1534

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Editions Obsolete

...d Form 50 B
January 1982
...of Personnel Management
Chapter 296

NOTIFICATION OF PERSONNEL ACTION

...ame (Last, First, Middle)
2. SSN
Position Sensitivity (Opt.)
4. Date of Birth
...eteran Preference: 1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt./30% Comp.
8. Serv. Comp. Date (Leave)
Tenure
...4. Retirement: 1-CS 2-FICA 3-FS 4-None 5-Other 6-CS Spec
...EGLI
10. FLSA: E-Exempt N-Nonexempt
...Sex
12. Citizenship: 1-US 8-Other
13. Emp. Lost (Opt.)
...ffective Date
15. Annuitant Indic...: 1-Reem... 2-RETO... ...nn-CS 3-RETM 4-RETO & CS 5-RETM & CS 9-Not Applicable
16. Work Schedule: F—Full-time P—Part-time I—Intermittent ...FT Seasonal ...PT Seasonal ...INT Seasonal
17. (Reserved for OPM Use)
18-B. Nature of Action
19-A. NOAC
19-B. Nature of Action
18-D. Authority
19-C. Auth Code
19-D. Authority
18-F. Authority
19-E. Auth Code
19-F. Authority
...ROM: Position Title and Number
27. To: Position Title and Number
...ame and Location of Employing Office
28. Name and Location of Employing Office
...y Plan & Occupational Code
23. Grade or Level
24. Step or Rate
25. ...
26. Pay Basis
29. Pay Plan & Occupational Code
30. Grade or Level
3... Step or Rate
1
32. Salary
33. Pay Basis
...ty Section
35. Position Occupied: 1-Competitive 2-Excepted 3-SES General 4-SES Career Re...
36. Appropriation Code (Optional)
...emarks

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1986 DEC -9 A 10 31
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39. FPMIS Data
...of Approving Official
B. Date
A. Supv. or Manager. Ind.
B. VEV IND
C.
D. Barg. Unit Status
E. Functional Class
...ture/Authentication of Approving Official
...anet R. DeCora
F. Ed. Level
G. Year Degree Attained
H. ...
...Academic Discipline
I. Agency Code
J. Location Code
K. SON
[redacted]
...ying Department or Agency
[redacted]
N.
O.
P.
Q.

1 - Employee Copy

Previous Editions Unusable After 12/31/81

Ur ited States Department of the In rior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
EDUCATION EMPLOYMENT CONTRACT

SCHOOL-YEAR CONTRACT
(Type of Contract)

HOPI AGENCY OIEP SCHOOL
(Location)

This is a contract of employment between the Department of ie Interior, Bureau of Indian Affairs, Offic of Indian Education Programs designa :d representative for the HOPI AGENCY OIE School at KEAMS CANYON, ARIZONA and LEE L. CARGILE, herein called employee. BOTH P TIES MUTUALLY AGREE:

1. The employee shal be employed by the Office of Indian iucation Programs (OIEP) for a period from NOVEMBER 3RD, 19 86 to MAY 29TH, 19 87 as COUNSELOR at HOPI AGENCY OFC OF INDIAN EDUCATION PROGS.
2. The employee shal , during the term of employment, perf m duties pertaining to the position and he duties assigned by the supervisor.
3. This contract and the parties hereto are and shall cont iue to be subject to applicable laws a d regulations of the Federal Governme t and the State in which the positio is located and to the rules and regu ations of the Department of the Interior, ureau of Indian Affairs, the OIEP, an the rules and regulations of the loca school and the local school board.
4. Subject to the pr visions of the applicable approved bu get, the employees shall, during the term h reof, receive a salary of $11.67 per our less required or authorized deduct ons.
5. In the event that a pre-employment or post-audit review of the qualifications of the employee show that the employee is not suitable or qualified for the positio herein, this cont act may be terminated immediately by ne OIEP.
6. This contract may be terminated by the OIEP during the chool year and prior to its expiration da e in accordance with the rules and re ulations of the OIEP as set forth in 62 B AM. Failure to renew this contract d es not constitute termination for caus by OIEP or for other reasons.

DESIGNATED REPRESENTA IVE OIEP for 11/3/86
(Signature) (Date)
ALBERT T. SINQUAH, SUPERINTE DENT FOR EDUCATION
(Title)

EMPLOYEE: Lee L. Cargile 11-3-, 1986
(Date Signed)

CONCURRED BY: 11-3, 1986
(School Board Chairman) (Date Signed)

ard Form 50-B
ecember 1985
ffice of Personnel Management
hapter 296

OTIFICATION OF PERSONNEL ACTION

e (Last, First, Middle) ARCIL , L . . ! A R	2. SSN 444-?*-1207	tion Sensitivity (Ltd) 1	4. Date of Birth 11-23-23
eran Preference 1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt./30% Comp.	6. Serv. Comp. Date (Leave) 0?-1?-?1	enure 0	8. Retirement K
LI COVE . . D . Y . . . I C . . . I	10. FLSA E—Exempt N—Nonexempt	ient N	12. Citizenship 1 1—US 8—Other
			13. Comp. Level (Ex
ective Date ?-30-?7	15. Annuitant Indicator 1—Reemp. ?—RETO . . .-CS 3—RETM 4—RETO & CS 5—RETM & CS 9—Not Applicable	16. Work Schedule F—Full-time P—Part-time I—Intermittent G—FT Seasonal Q—PT Seasonal	—INT Seasonal —FT On Call —PT On Call
			17. (Reserved for OPM Use)
18-B. Nature of Action 30 PLACEMENT IN NONP . STATU	19-A. NOAC	19-B. Nature of Action	
Auth Code JL	18-D. Authority FPM CH 3?0	19-C. Auth Code	19-D. Authority
Auth Code	18-F. Authority	19-E. Auth Code	19-F. Authority
ROM: Position Title and Number COUNSELOR ?35010C -04135		27. TO: Position Title and Number	
ame and Location of Employing Office PHOENIX AREA HDQTRS HOPI AGENCY KEAMS CANY PHOENIX, ARIZONA		28. Name and Location of Employing Office	

Pay Plan & Occupational Code	23. Grade or Level	24. Step or Rate	25.	y	26. Pay Basis	29. Pay Plan & Occupational Code	30. Grade or Level	31	p or Rate	32. Salary	33. Pay Basis
?Y 1710	03	10		?12.02	PH						

ty Station KEAMS CANYON, NAVAJO, . Z	35. Position Occupied 1—Competitive 2—Excepted 3—SES Gen. 4—SES Career	eserved	36. Appropriation Code (Optional)

marks

CK-DIG: 5

EGLI COVERAGE CONTINU . FOR UP TO 12 MONTHS IN A NONPAY STATUS.

EALTH BENEFITS COVERA . WILL CONTINUE DURING THIS PERIO . DEDUCTIONS WERE
RORATED DURING THE SC . OL YEAR.
ERVICE CREDIT FOR RET . EMENT, REDUCTION-IN-FORCE, AND L . AVE ACCRUAL
URPOSES CONTINUES FOR . P TO A MAXIMUM OF 6 MONTHS IN NO . PAY STATUS PER
ALENDAR YEAR.
ODE "K" IN BLOCK 3 IN . CATES COVERAGE BY FERS AND FICA
EASON FOR PLACEMENT I . NON PAY STATUS CONDITION OF
MPLOYMENT

posted
3/22/88
mr

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AUG 1987
HOPI AGENCY
EDUCATION

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?? AUG 25 P 1:30
?A. HOPI AGENCY

proval		39. FPM			
of Approving Official HORIZING OFFICIAL	B. Date 0?-0?-?7	A. Supv. or Manager 5	. . . . REV IND N	RD 0	D. Reg. Unit Size 0065
					E. Functional Class 00
gnature/Authentication of Approving Official		F. Educational Level	G. Year Degree Attained	cademic Discipline	I. Agency Code IN06
	. . 15?4??170?3?	J. Location Code 04-0253-017		K. SON 1534	[redacted]
ploying Department or Agency ?T-??? OF INDIAN AFF		[redacted]	N.	P. 5514135	Q.

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NSN 7540-01-119-4907

Rev November 1985
U.S. Office of Personnel Management
FPM Chapter 296

REQUEST FOR PERSONNEL ACTIOI

3-4k

Part I—Requesting Office—Also comp Part II, Items 1 and 20-34 as necessary

A For Agency Use

B For Additional Information Call (N and Telephone Number)

C Personnel Action Requested: Placement in Nonpay Status

D Proposed Effective Date: 05-30-87

E Requested by (Signature, Title a ate)

F Position Action Requested

G Proposed Effective Date

H Approved by (Signature, Title a ate): Acting Super itendent for Education JUL 10 1!

I Remarks by Requesting Office (Note Supervisors: If a requested is employee resignation and if you know of additional or conflicting reaso the resignation, please state these facts on a separate and attach to SF 52.)

Copy of J :s E. Frick form attached.
SF 8 issu to employee.

Part II—For Preparation of SF 50

1 Name (Last, First, Middle) CARGILE, Lee Lane	2 SSN 464-28-1207	3 Position Sensitivity (Opt) 1	4 Date of Birth 11-23-23
5 Veteran Preference 2 1—None 2—5 Pt 3—10 Pt 4—10 Pt 5—10 Pt Other 6—10 Pt /30% Comp	6 Serv Comp Date (Leave) 06-29-81	7 Tenure 0	8 Retirement K
9 FEGLI C Covered by basi fegli	10 FLSA E E—Exempt N—Nonexempt	11 Sex M	12 Citizenship 1 1—US 8—Other
14 Effective Date 05-30-87	15 Annuitan cator: 9 mp Ann CS 3—RETM 4—RET0 & CS 5—RETM & CS 9—Not Applicable	16 Work Schedule G F—Full-time P—Part-time I—Intermi G—FT Sea O—PT Sea J—INT Seasonal H—FT On Call R—PT ON Call	17 (Reserved for OPM Use)

18-A NOAC: 430

18-B Nature of Action: Placement in No pay Status

18-C Auth Code: CUL

18-D Authority: FPM Chapter 340

18-E Auth Code

18-F Authority

19-A NOAC

19-B Nature of Action

19-C Auth Code

19-D Authority

19-E Auth Code

19-F Authority

20 FROM: Position Title and Number: Counselor, 561.41357

27 TO: Position Title and Number

21 Name and Location of Employing Office:
Bureau of Indian Aff irs
Phoenix Area Headqua ters
Hopi Agency, Polacca Day School
Keams Canyon, School

28 Name and Location of Employing

22 Pay Plan & Occupational Code	23 Grade or Level	24 Step or Rate	25 Salary	26 Pay Basis	29 Pay Plan & Occupational Code	30 Grade or L	31 Step or Rate	32 Salary	33 Pay Ba
CY-1710	03	10	$12.02	PH					

34 Duty Station: Polacca, Navajo, Ari ona

35 Position Occupied: 2
1—Competitive 2—Excepted 3—SES 4—SES

36 Appropriation Code (Optional)

37 Remarks

M31 - Reason for pla ement in nonpay status - conditi of employment.

G33 - Service credit for retirement, reduction-in-for , and leave accrual poses continue for up to a maximum of six montl of nonpay time per calendar year.

B39 - FEGLI coverage continues for up to 12 months in nonpay status.

JUL 13 1987

CONTINUED ON REVERSE SIDE

52-114

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United St s Department of the Int r
BU AU OF INDIAN AFFAIRS
HOPI AGENCY
P. O. Box 158
ams Canyon, Arizona 86031

IN REPLY REFER TO:

Memorandum

To: Phoenix Area Office. ttn: Delores Harjo, Personn

From: Personnel Assistant

Subject: Personnel Processin ocuments for LEE L. CA ILE

P.L. 95-561 Con ct Position: COUNSELOR, 561.4135T

Attached are the following pro ssing documents on the above med individual:

- ☑ SF-52, Request for P sonnel Action
- ☑ Education Employment ontract
- ☑ Certificate of Eligi les 11/3/84 to 5/29/8
- ☑ Vacancy Announcement
- ☑ Rating Sheet
- ☑ SF-171, Personal Qua ifications Statement
- ☑ Form 5-4432, Verific ion of Indian Preference
- ☑ Arizona State Certif ate
- ☑ Copies of Official T nscripts
- ☑ Form 5-6233, Positio Description Cover & Position scription
- ☑ SF-61, Appointment A fidavit
- ☑ SF-61B, Declaration f Appointee
- ☑ SF-78, Certificate o Medical Examination
- ☑ SF-85, Data for Nons sitive or Noncritical-Sensiti Position
- ☑ SF-87, Fingerprint C arts (2)
- ☑ SF-144, Statement of Prior Federal and Military Se ce
- ☑ SF-177, Statement of Physical Ability for Light Dut Work
- ☑ SF-181, Race and Nat onal Origin Identification
- ☑ SF-2809, Federal Emp oyees Health Benefits Program
- ☑ SF-2817, Election, D clination, or Waiver of Life urance Coverage
- ☑ W-4, Employee's Withi olding Allowance Certificate
- ☑ EDC-14, Salary Check Mailing Address Form
- ☑ DD-214, Verification of Military Service

Standard Form 50-B
Rev. 6/87
U.S. Office of Personnel Management
FPM Chapter 296

OTIFICATION OF PERSONNEL A(TION

1. Name (Last, First, Middle) CARGILE, LEE LANE	2. Social Security Number 464-28-1207	3. Date of Birth 11-23-23	4. Effective Date 01-01-

FIRST ACTION

5-A. Code 894	5-B. Nature of Action PAY ADJ
5-C. Code ZLM	5-D. Legal Authority PUBLIC LAW 95 561
5-E. Code	5-F. Legal Authority

SECOND ACTION

6-A. Code	6-B. Nature of Action
6-C. Code	6-D. Legal Authority
6-E. Code	6-F. Legal Authority

7. FROM: Position Title and Number

8. Pay Plan	9. Occ. Code	10. Grade or Level	11. Step or Rate	12. Salary	13. Pay Basis
CY	1710	03	5	$13.17	PH

14. Name and Location of Position's Organization

15. TO: Position Title and Number
COUNSELOR
H650100 04135

16. Pay Plan	17. Occ. Code	18. Grade or Level	19. Step or Rate	20. Salary/Award	21. Pay Basis
CY	1710	3	15	$13.71	

22. Name and Location of Position's Organization
PHOENIX ARE HDQTRS
HOPI AGENCY KEAMS CANYON
PHOENIX, AR ZONA

8-16-88
to
6-2-89

EMPLOYEE DATA

23. Veterans Preference: 2 (1-None, 2-5 Pt, 3-10 Pt. Disab., 4-10 Pt. Comp.)
24. Tenure: 3 (0-None, 1-Permanent, 2-Cond., 3-Indef.)
25. Agency Use: M
26. Veterans Preference for RIF: ☐ YES ☐ N
27. FEGLI: C
28. Annuitant Indicator: 9 (1-Reempl. Ann.-CS, 2-RETO, 3- TM, 4- TO & CS, 5-RETM & CS, 9-Not Applicable)
29. Pay Rate Determinant: 0
30. Retirement Plan: K FERS AND FICA
31. Service Comp. Date (Leave): 07-10-81
32. Work Schedule: G (F-Full-time, P-Part-time, G-FT Seasonal, Q-PT Seasonal, J-INT Seasonal, H-FT On Call, R-PT On Call)
33. Part-Time Hours Per Biweekly Pay Period:

POSITION DATA

34. Position Occupied: 2 (1-Competitive Service, 2-Excepted Service, 3-SES Ge, 4-SES Ca)
Reserved
35. FLSA Category: E (E-Exempt, N-Nonexempt)
36. Appropriation Code:
37. Bargaining Unit Status: 0065
38. Duty Station Code: 04-0255 017
39. Duty Station (City-County-State or Overseas Location): KEAMS CANYON, NAVAJO, Z

40. Agency Data FUNC	41. VEV IN	42. EDUC. LVL.	43. SUPV. IND	44. POSIT ON SENSITIVITY
00	N		8	NON-S NSITIVE

45. Remarks

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7 8 9 10 11 12 1 2 3 4 5 6

46. Employing Department or Agency: INT-BUR OF INDIAN F
47. Agency Code: IN06
48. Personnel Office ID: 1534
49. Approval Date: 01-05-89
50. Signature/Authentication and Title of Approving Official: A251534HHG07
Lila Jean Red Hill
AUTHORIZING OF ICIAL

5-Part 50-312
Previous Editions Unusable After 8/3
NSN 7540-01-249-

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle): CARGILE, LEE LANE
2. SSN: 464-28-1207
3. Position Sensitivity: 1
4. Date of Birth: 11-23-23
5. Veterans Preference: 2 (1-None, 2-5 Pt., 3-10 Pt. Disab., 4-10 Pt. Comp., 5-10 Pt. Other, 6-10 Pt./30% Comp)
6. Serv. Comp. Date (Leave): 06-29-81
7. Tenure: 3
8. Retirement: K (1-CS, 2-FICA, 3-FS, 4-None, 5-Oth, 6-CS)
9. FEGLI: C
10. FLSA: E (E-Exempt, N-Nonexempt)
11. Sex: M
12. Citizenship: 1 (1-US, 8-Other)
14. Effective Date: 01-03-88
15. Annuitant Indicator: 9 (3-RETM, 4-RETO&CS, 5-RETM&CS, 9-NotApplicable)
16. Work Schedule: G (F-Full-time, P-Part-time, I-Intermittent, G-FT Seasonal, Q-PT Seasonal, J-INT Seasonal)
17. Reserved for OPM Use
18-A. Code: 894
18-B. Nature of Action: PAY ADJ
18-C. Auth Code: ZLM
18-D. Authority: PUBLIC LAW 95-5(
18-E. Auth Code
18-F. Authority
19-A. Code
19-B. Nature of Action
19-C. Auth Code
19-D. Authority
19-E. Auth Code
19-F. Authority
20. FROM: Position Title and Number
21. Name and Location of Employing Office
22. Pay Plan & Occupational Code: CY 1710
23. Grade or Level: 03
24. Step or Rate: 13
25. Salary: $12.56
26. Pay Basis: PH
27. To: Position Title and Number: COUNSELOR H650100 -(,135
28. Name and Location of Employing Office: PHOENIX AREA HDQTRS HOPI AGENCY KEAMS CANYON PHOENIX, ARIZONA
29. Pay Plan & Occupational Code: CY 1710
30. Grade or Level: 0(
31. Step or Rate: 13
32. Salary: $12.81
33. Pay Basis: PH
34. Duty Station: KEAMS CANYON, NAVAJO AZ
35. Position Occupied: 2 (1-Competitive, 2-Excepted, 3-SES General, 4-SES Career Reserved)
36. Appropriation Code (Optional)
37. Remarks

Posted 3/22/88 ma

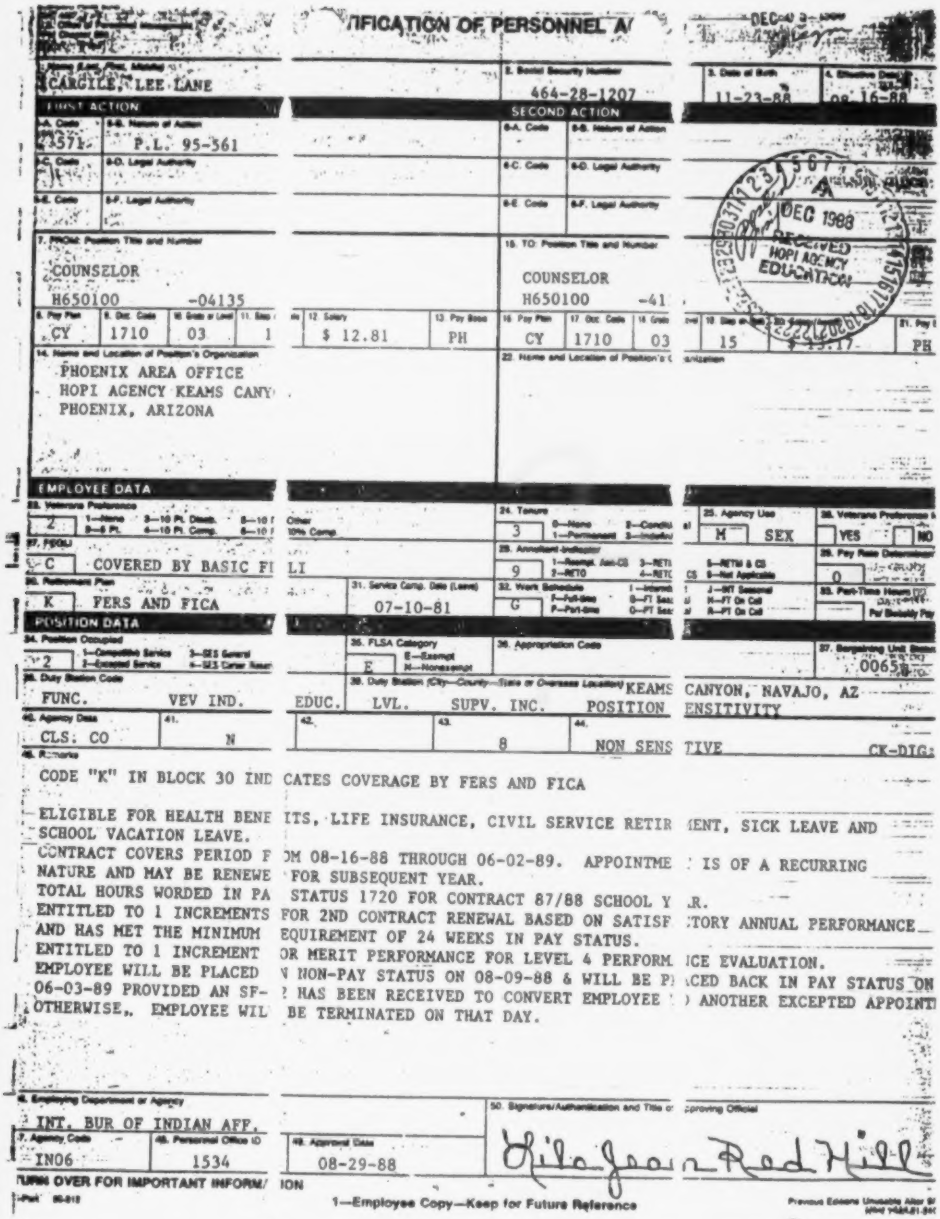
FEB 1988
RECEIVED
HOPI AGENCY
EDUCATION

HOPI AGENCY
10 P 12:30

38. Approval
A. Title of Approving Official
B. Date
C. Signature/Authentication of Approving Official: Lila Jean R d Hill A251534HHI0718
39. FPMIS Data
Vet Ind: N
8
E. PRD: 0
Barg Unit Status: 0065
Functional C: 0(
F. Ed. Level
Agency Code: IN06
J. Location Code: 04-0255-(17
K. SON: 1534
40. Employing Department or Agency: INT-BUR OF INDIAN AFF
M.
O.
P.
Q.

5 Part
50-303

1-Employee Copy



IFICATION OF PERSONNEL A

DEC 3

1. Name (Last, First, Middle) CARGILE, LEE LANE
2. Social Security Number 464-28-1207
3. Date of Birth 11-23-88
4. Effective Date 08-16-88

FIRST ACTION

5-A. Code 571
5-B. Nature of Action P.L. 95-561
5-C. Code
5-D. Legal Authority
5-E. Code
5-F. Legal Authority

SECOND ACTION

6-A. Code
6-B. Nature of Action
6-C. Code
6-D. Legal Authority
6-E. Code
6-F. Legal Authority

7. FROM: Position Title and Number
COUNSELOR
H650100 -04135

8. Pay Plan	9. Occ. Code	10. Grade or Level	11. Step	12. Salary	13. Pay Basis
CY	1710	03	1	$ 12.81	PH

14. Name and Location of Position's Organization
PHOENIX AREA OFFICE
HOPI AGENCY KEAMS CANY
PHOENIX, ARIZONA

15. TO: Position Title and Number
COUNSELOR
H650100 -41

16. Pay Plan	17. Occ. Code	18. Grade	19. Step	20. Salary	21. Pay
CY	1710	03	15	$ 13.17	PH

22. Name and Location of Position's Organization

DEC 1988
RECEIVED
HOPI AGENCY
EDUCATION

EMPLOYEE DATA

23. Veterans Preference 2 1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt. 10% Comp.
24. Tenure 3 0—None 1—Permanent 2—Conditi 3—Indefin
25. Agency Use M SEX
26. Veterans Preference ☐ YES ☐ NO
27. FEGLI C COVERED BY BASIC FEGLI
28. Annuitant Indicator 9 1—Reempl. Ann-CS 2—RETO 3—RETI 4—RETC 5—RETM & CS 9—Not Applicable
29. Pay Rate Determinant 0
30. Retirement Plan K FERS AND FICA
31. Service Comp. Date (Leave) 07-10-81
32. Work Schedule G F—Full-time P—Part-time I—Intermit. G—FT Seas. Q—FT Seas. J—INT Seasonal K—FT On Call R—PT On Call
33. Part-Time Hours Per Biweekly Pay

POSITION DATA

34. Position Occupied 2 1—Competitive Service 2—Excepted Service 3—SES General 4—SES Career Reserved
35. FLSA Category E E—Exempt N—Nonexempt
36. Appropriation Code
37. Bargaining Unit Status 0065
38. Duty Station Code
39. Duty Station (City—County—State or Overseas Location) KEAMS CANYON, NAVAJO, AZ
FUNC. VEV IND. EDUC. LVL. SUPV. INC. POSITION SENSITIVITY
40. Agency Data CLS: CO
41. N
42.
43. 8
44. NON SENSITIVE CK-DIG:

45. Remarks
CODE "K" IN BLOCK 30 INDICATES COVERAGE BY FERS AND FICA

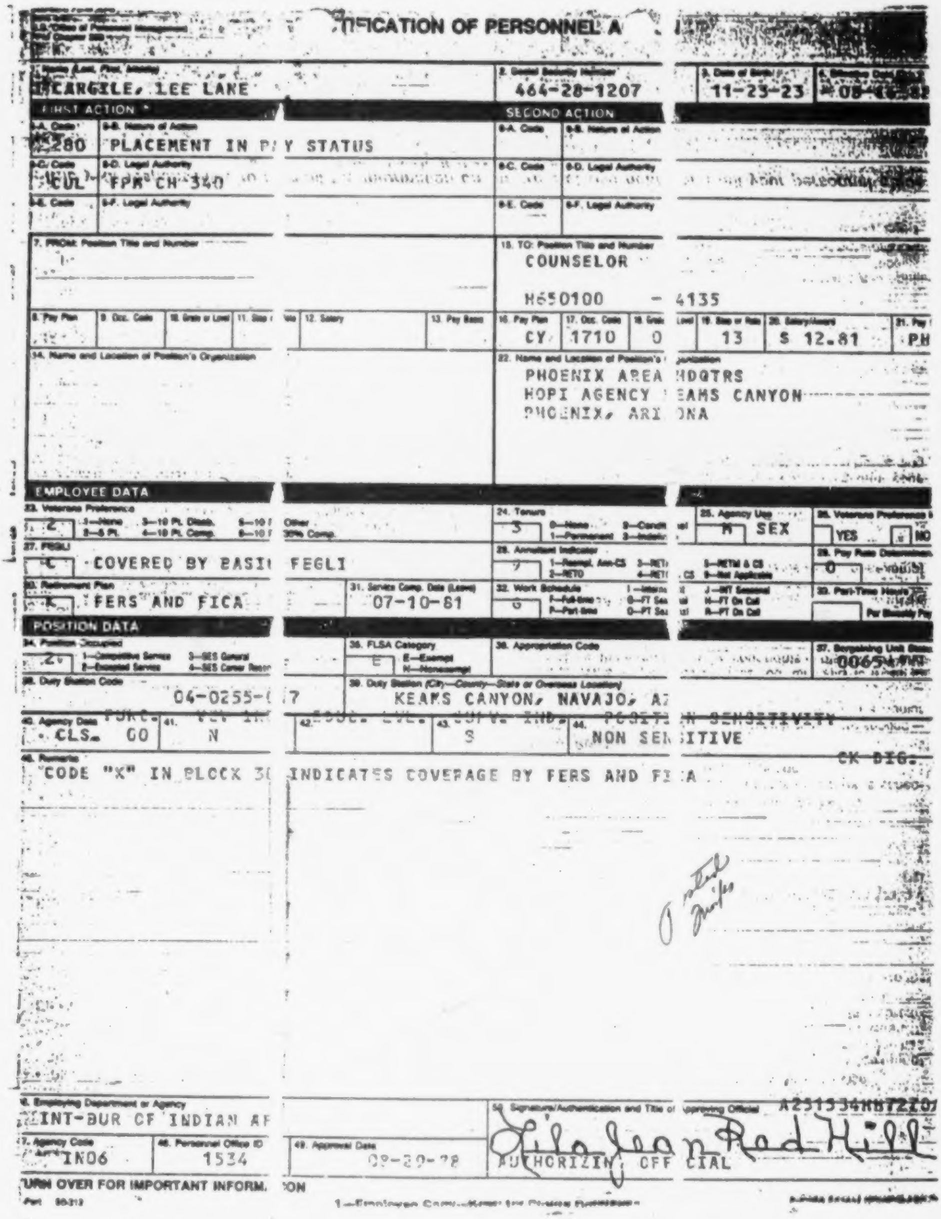
ELIGIBLE FOR HEALTH BENEFITS, LIFE INSURANCE, CIVIL SERVICE RETIREMENT, SICK LEAVE AND SCHOOL VACATION LEAVE.
CONTRACT COVERS PERIOD FROM 08-16-88 THROUGH 06-02-89. APPOINTMENT IS OF A RECURRING NATURE AND MAY BE RENEWED FOR SUBSEQUENT YEAR.
TOTAL HOURS WORDED IN PAY STATUS 1720 FOR CONTRACT 87/88 SCHOOL YEAR.
ENTITLED TO 1 INCREMENTS FOR 2ND CONTRACT RENEWAL BASED ON SATISFACTORY ANNUAL PERFORMANCE AND HAS MET THE MINIMUM REQUIREMENT OF 24 WEEKS IN PAY STATUS.
ENTITLED TO 1 INCREMENT FOR MERIT PERFORMANCE FOR LEVEL 4 PERFORMANCE EVALUATION.
EMPLOYEE WILL BE PLACED IN NON-PAY STATUS ON 08-09-88 & WILL BE PLACED BACK IN PAY STATUS ON 06-03-89 PROVIDED AN SF-52 HAS BEEN RECEIVED TO CONVERT EMPLOYEE TO ANOTHER EXCEPTED APPOINT OTHERWISE, EMPLOYEE WILL BE TERMINATED ON THAT DAY.

46. Employing Department or Agency INT. BUR OF INDIAN AFF.
47. Agency Code IN06
48. Personnel Office ID 1534
49. Approval Date 08-29-88
50. Signature/Authentication and Title of Approving Official Lila Jean Red Hill

TURN OVER FOR IMPORTANT INFORMATION

1—Employee Copy—Keep for Future Reference

Previous Editions Unusable After



NOTIFICATION OF PERSONNEL A

1. Name (Last, First, Middle) MCCARGILE, LEE LANE	2. Social Security Number 464-28-1207	3. Date of Birth 11-23-23	4. Effective Date 08

FIRST ACTION — SECOND ACTION

5-A. Code 280	5-B. Nature of Action PLACEMENT IN PAY STATUS	6-A. Code	6-B. Nature of Action
5-C. Code CUL	5-D. Legal Authority FPM CH 340	6-C. Code	6-D. Legal Authority
5-E. Code	5-F. Legal Authority	6-E. Code	6-F. Legal Authority

7. FROM: Position Title and Number

15. TO: Position Title and Number
COUNSELOR
H650100 - 4135

16. Pay Plan	17. Occ. Code	18. Grade or Level	19. Step or Rate	20. Salary/Award	21. Pay
CY	1710	0	13	$ 12.81	PH

22. Name and Location of Position's Organization
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS CANYON
PHOENIX, ARIZONA

EMPLOYEE DATA

23. Veterans Preference 2
24. Tenure 3
25. Agency Use M SEX
26. Veterans Preference ☐ YES ☒ NO
27. FEGLI C COVERED BY BASIC FEGLI
28. Annuitant Indicator 9
29. Pay Rate Determinant 0
30. Retirement Plan K FERS AND FICA
31. Service Comp. Date (Leave) 07-10-81
32. Work Schedule G

POSITION DATA

34. Position Occupied 2
35. FLSA Category E
37. Bargaining Unit Status 0065
38. Duty Station Code 04-0255-017
39. Duty Station (City—County—State or Overseas Location) KEAMS CANYON, NAVAJO, AZ

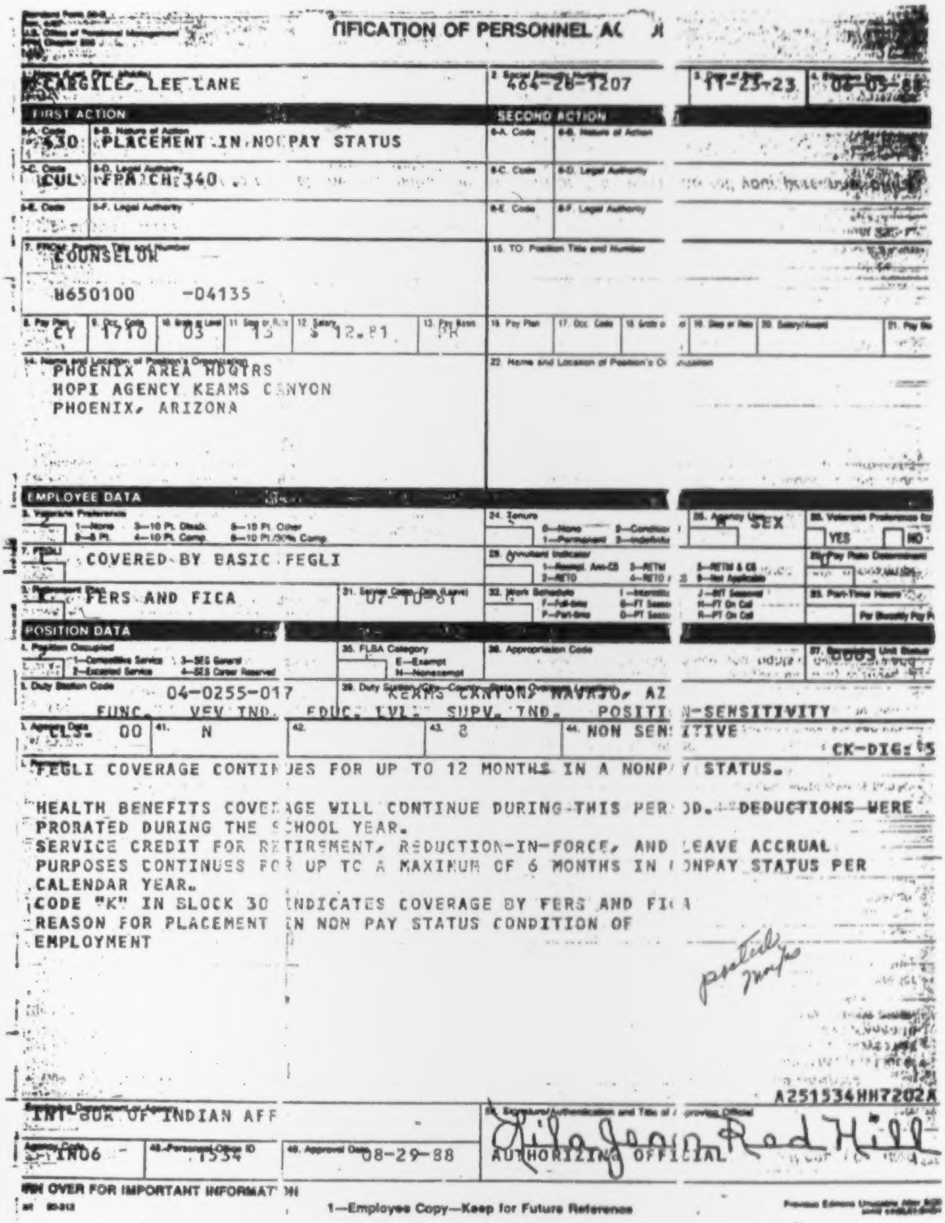
40. Agency Data PURC. CLS. 00	41. VET IND N	42. EDUC. LVL.	43. SUPV. IND. S	44. POSITION SENSITIVITY NON SENSITIVE	CK DIG.

45. Remarks
CODE "X" IN BLOCK 30 INDICATES COVERAGE BY FERS AND FICA

46. Employing Department or Agency INT-BUR OF INDIAN AF
47. Agency Code IN06
48. Personnel Office ID 1534
49. Approval Date 09-29-78
50. Signature/Authentication and Title of Approving Official A2515341NB7220
Lila Jean Red Hill
AUTHORIZING OFFICIAL

TURN OVER FOR IMPORTANT INFORMATION

1—Employee Copy—Keep for Future Reference



TIFICATION OF PERSONNEL AC

1. Name (Last, First, Middle): CARGILE, LEE LANE
2. Social Security Number: 464-26-1207
3. Date of Birth: 11-23-23
4. Effective Date: 06-05-88

FIRST ACTION

5-A. Code: 430
5-B. Nature of Action: PLACEMENT IN NONPAY STATUS
5-C. Code: CUL
5-D. Legal Authority: FPM CH 340
5-E. Code
5-F. Legal Authority

SECOND ACTION

6-A. Code
6-B. Nature of Action
6-C. Code
6-D. Legal Authority
6-E. Code
6-F. Legal Authority

7. FROM: Position Title and Number: COUNSELOR
H650100 -04135

8. Pay Plan: CY
9. Occ. Code: 1710
10. Grade or Level: 03
11. Step or Rate: 13
12. Salary: $ 12.81
13. Pay Basis: PH

14. Name and Location of Position's Organization:
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS CANYON
PHOENIX, ARIZONA

15. TO: Position Title and Number
16. Pay Plan
17. Occ. Code
19. Step or Rate
20. Salary/Award
22. Name and Location of Position's Organization

EMPLOYEE DATA

5. Veterans Preference: 1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt./30% Comp.
24. Tenure: 0—None 1—Permanent 2—Conditional 3—Indefinite
26. Agency Use: SEX
28. Veterans Preference for RIF: ☐ YES ☐ NO
7. FEGLI: COVERED BY BASIC FEGLI
29. Annuitant Indicator
29. Pay Rate Determinant
3. Retirement Plan: K FERS AND FICA
31. Service Comp. Date (Leave): 07-10-81
32. Work Schedule: F—Full-time P—Part-time
33. Part-Time Hours Per Biweekly Pay Period

POSITION DATA

4. Position Occupied: 1—Competitive Service 2—Excepted Service 3—SES General 4—SES Career Reserved
35. FLSA Category: E—Exempt N—Nonexempt
36. Appropriation Code
37. Bargaining Unit Status: 0003
8. Duty Station Code: 04-0255-017
39. Duty Station (City—County—State or Overseas Location): KEAMS CANYON, NAVAJO, AZ

FUNC. CLS.: 00
VEV IND.: N
EDUC. LVL.:
SUPV. IND.: 8
POSITION-SENSITIVITY: NON SENSITIVE
CK-DIG: 5

Remarks:

FEGLI COVERAGE CONTINUES FOR UP TO 12 MONTHS IN A NONPAY STATUS.

HEALTH BENEFITS COVERAGE WILL CONTINUE DURING THIS PERIOD. DEDUCTIONS WERE PRORATED DURING THE SCHOOL YEAR.
SERVICE CREDIT FOR RETIREMENT, REDUCTION-IN-FORCE, AND LEAVE ACCRUAL PURPOSES CONTINUES FOR UP TO A MAXIMUM OF 6 MONTHS IN NONPAY STATUS PER CALENDAR YEAR.
CODE "K" IN BLOCK 30 INDICATES COVERAGE BY FERS AND FICA
REASON FOR PLACEMENT IN NON PAY STATUS CONDITION OF EMPLOYMENT

partial [illegible]

A251534HH7202A

Employing Department or Agency: INT BUR OF INDIAN AFF
Agency Code: II-IN06
48. Personnel Office ID: 1534
49. Approval Date: 08-29-88
50. Signature/Authentication and Title of Approving Official: Lila Jean Red Hill
AUTHORIZING OFFICIAL

TURN OVER FOR IMPORTANT INFORMATION

1—Employee Copy—Keep for Future Reference

IFICATION OF PERSONNEL AC ON

Name (Last, First, Middle): ARGILE, LEE LAKE
2. Social Security Number: 464-?8-1207
3. Date of Birth: 11-23-23
4. Effective Date: 01-03-88

ST/ACTION

5-A. Code: 02
5-B. Nature of Action: CORRECTION
5-D. Legal Authority:
5-F. Legal Authority:

SECOND ACTION

6-A. Code: 894
6-B. Nature of Action: PAY ADJ
6-C. Code: ZLM
6-D. Legal Authority: PUBLIC LAW 95-561
6-E. Code:
6-F. Legal Authority:

From: Position Title and Number
COUNSELOR
H650100 -04135

Pay Plan	9. Occ. Code	10. Grade or Level	11. Step or Rate	Salary	13. Pay Basis
CY	1710	03	13	$ 12.56	PH

Name and Location of Position's Organization
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS CAN ON
PHOENIX, ARIZONA

15. TO: Position Title and Number
COUNSELOR
H650100 -04135

16. Pay Plan	17. Occ. Code	18. Grade or Level	19. Step or Rate	20. Salary/Award	21. Pay Basis
CY	1710	03	13	$ 12.81	PH

22. Name and Location of Position's Organization
PHOENIX AREA HDQTRS
HOPI AGENCY KE MS CANYON
PHOENIX, ARIZONA

PLOYEE DATA

Veterans Preference: 1—None 3—10 Pt. Disab. 5—10 Pt. Other 2—5 Pt. 4—10 Pt. Comp. 6—10 Pt./30% Comp.
24. Tenure: 3 — 0—None 1—Permanent 2—Conditional 3—Indefinite
25. Agency Use: N SEX
26. Veterans Preference for RIF: ☐ YES ☐ NO
FEGLI: COVERED BY BASIC F GLI
28. Annuitant Indicator: 9 — 1—Reempl. Ann-CS 2—RETD 3—RETM 4—RETD & CS 5—RETM & CS 9—Not Applicable
29. Pay Rate Determinant: 0
Retirement Plan: FERS AND FICA
31. Service Comp. Date (Leave): 07-10-81
32. Work Schedule: G — F—Full-time P—Part-time I—Intermittent G—FT Seasonal Q—PT Seasonal J—INT Seasonal H—FT On Call R—PT On Call
33. Part-Time Hours Per Biweekly Pay Period:

SITION DATA

Position Occupied: 1—Competitive Service 2—Excepted Service 3—SES General 4—SES Career Reserved
35. FLSA Category: E — E—Exempt N—Nonexempt
36. Appropriation Code:
37. Bargaining Unit Status: 0065
Duty Station Code: 04-0255-017
39. Duty Station (City—County—State or Overseas Location): KEAMS CANYON, NAVAJO, AZ

~~FUNC.~~ ~~VEV IND.~~ ~~EDUC. LVL.~~ ~~SUPV. IND.~~ ~~POSITIO SENSITIVITY~~

CLS. 00 | 41. N | 43. 8 | 44. NON SENS TIVE

~~CK-DIG: 5~~

Remarks
ODE "K" IN BLOCK 30 I DICATES COVERAGE BY FERS AND FIC
ORRECTS ITEM 6 FROM C -29-81 TO 07-10-81 TO REFLECT
NACTIVE MILITARY DUTY.
LSO CORRECTS THE SAME ITEM ON ALL PREVIOUS PERSONNEL A TIONS FROM 11-03-86
O 11-03-87.

poi 20
5/6/88

Employing Department or Agency: INT-BUR OF INDIAN AFF
Agency Code: IN06
48. Personnel Office ID: 1534
Approval Date: 05-12-88
50. Signature/Authentication and Title of Approving Official: Eileen F. Johnson
AUTHORIZING OFFI IAL

~~A251534HH4884P~~

N OVER FOR ORTANT INFORMATI N

1—Employee Copy—Keep for Future Reference

Standard Form 50-B
November 1985
Office of Personnel Management
Chapter 296

NOTIFICATION OF PERSONNEL ACTION

Name (Last, First, Middle)
ARGILE, LEE LANE

2. SSN
464-28-1207

Position Sensitivity Code
1

4. Date of Birth
11-23-23

Veterans Preference
1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt./30% Comp.

6. Serv. Comp. Date (Leave)
06-29-81

Tenure
0

8. Retirement
K

FEGLI
COVERED BY EASIC F LI

10. FLSA
E
E—Exempt
N—Nonexempt

Sex
M

12. Citizenship
1
1—US
8—Other

13. Comp. Level

Effective Date
8-10-87

15. Annuitant Indicator
9

16. Work Schedule
G
F—Full-time
P—Part-time
I—Intermittent
G—FT Seasonal
Q—PT Seasonal
J—INT Seasonal
H—FT On Call
R—PT On Call

17. (Reserved for OPM Use)

NOAC 171

19-B. Nature of Action
CONV TO EXC APPT IE 08-09-88

Auth Code CM
19-D. Authority
P. L. 95-561

Auth Code
19-F. Authority

19-A. NOAC
19-B. Nature of Action
19-C. Auth Code
19-D. Authority
19-E. Auth Code
19-F. Authority

FROM: Position Title and Number
COUNSELOR
H650100 -04135

27. TO: Position Title and Number
COUNSELOR
H650100 -041 5

Name and Location of Employing Office
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS CAN ON
PHOENIX, ARIZONA

28. Name and Location of Employing Office
PHCENIX AREA HD TRS
HOPI AGENCY KEA S CANYON
PHCENIX, ARIZON

Pay Plan & Occupational Code	Grade or Level	Step or Rate	Salary	Pay Basis	29. Pay Plan & Occupational Code	30. Grade or Level	Step or Rate	32. Salary	33. Pay Basis
CY 1710	03	10	$12.02	PH	CY 1710	03	13	$12.56	PH

Duty Station
KEAMS CANYON, NAVAJO, AZ

35. Position Occupied
2
1—Competitive
2—Excepted
3—SES General
4—SES Career

Reserved

36. Appropriation Code (Optional)

CK-DIG: 5

Remarks
ODE "K" IN BLOCK 8 IN ICATES COVERAGE BY FERS AND FICA
ONTRACT COVERS PERIOD 08-10-87 TO 06-03-88.
MPLOYEE ELIGIBLE TO C NTINUE CIVIL SERVICE RETIREMENT,
EALTH BENEFITS AND FE LI. EMPLOYMENT IS OF A RECURRING
ATURE AND APPOINTMENT MAY BE RENEWED FOR SUBSEQUENT SCH OL
EAR. TOTAL HOURS IN AY STATUS FOR COMPUTING AVERAGE P Y
OR CONTRACT PERIOD 11 03-86 TO 05-29-87, 1200 HOURS.

Posted
3/22/88
JM

SEP 1987
RECEIVED
INDIAN EDUCATION

Approval

Name and Title of Approving Official
HORIZING OFFICIAL

B. Date
08-16-87

Signature/Authentication of Approving Official
Nancy L. Jul

A251534HH7220A

Employing Department or Agency
NT-BUR OF INDIAN AFF

38. FPMS Data

A. Supv. or Nonsupv. Ind.	B. VEV IND	PRD	D. Barg. Unit Status	E. Functional Class
8	N	0	0065	00

F. Educational Level	G. Year Degree Attained	Academic Discipline	J. Agency Code
			IN06

J. Location Code
04-0255-017

K. SON
1534

[redacted]

[redacted]

N.

O.

P.
5614135

Q.

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L iited States Department of the Inte ior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P. O. Box 158
Keams Canyon, Arizona 86034

IN REPLY REFER TO:

EDUCATION EMPLOYMENT CONTRACT

School Year CONTRACT
(Type of Contract)

Polacca Day SCHOOL
(Location)

This is a contract o employment between the Departmen of the Interior, Bureau of Indian Aff irs, Office of Indian Education Pr ograms designated representative for t Hopi Agency/Polacca Day School Polacca, Arizo and Lee L. Carc ile herein called employee. BO PARTIES MUTUALLY AGREE:

1. The employee sha be employed by the Office of Inc ian Education Programs (OIEP) r a period from August 16, 19 88 to June 02, 19 89 as Co selor at the Polac a Day School

2 The employee sha , during the term of employment, erform duties pertaining to th position and the duties assigned y the supervisor.

3. This contract an the parties hereto are and shall continue to be subject to appli ble laws and regulations of the F deral Government and the State in hich the position is located and o the rules and regulations of t Department of the Interior, Bure au of Indian Affairs, the OIE and the rules and regulations of the local school and the local sc ol board.

4. Subject to the pr visions of the applicable approve budget, the employee shall, ring the term hereof, receive a s lary of $13.17 per hour less re ired or authorized deductions.

5. In the event that a pre-employment or post-audit re iew of the qualifications o the employee shows that the emplo ee is not suitable or qualified for he position herein, this contract may be terminated immediately by t OIEP.

6. This contract ma be terminated by the OIEP during he school year and prior to its expi ation date in accordance with the rules and regulations of t OIEP as set forth in 62 BIAM. Failure to renew this contract do not constitute termination for cause by OIEP or for other reasons.

DESIGNATED REPRESEN TIVE OIEP ______________________ , 08/15/88
(Signature) (Date)

Mildred Polewytewa, Pr ncipal
(Title)

EMPLOYEE: Cargile , Aug. 5, 1988
(Date Si ned)

CONCURRED BY: ______________________ , 8/15/8 , 19____
(Schc Board Chairman) (Date Si ned)

A ACHMENT TO ORIGINAL CONTRACT

Nation Federation of Federal Employees
mployment Contract Letter

This position is cov ed by the Collective Bargaining reement between the Bureau of Indian ffairs and the Council of Consol dated Bureau of Indian Affairs Local National Federation of Federal E ployees, Inc., the Agreement covers ter and conditions of employment for this position.

CALCULATION USED TO COMPUTE INCREMENTS AND NEW HOU LY RATE OF PAY FOR CONTRAC RENEWAL - SCHOOL YEAR 88-89

EMPLOYEE NA E: Lee L. Cargile

POSITION TI LE: Counselor

Current Pay Level & Increment: CY-1710-03/13

Current Hou ly Pay Rate: $12.81

ELIGIBLE FO RENEWAL INCREMENT:

In pay stat s for minimum of 24 weeks - [✓ YES] / N

At least sa isfactory rating in all critical elemen s on annual performance evaluation ---------------- [✓ YES] / N

If yes to b th: 1st year (eligible for 2 increm nts) ______

2-4 years (eligible for 1 incre ent) 1

ELIGIBLE FO MERIT INCREMENT(s):

In pay stat s for minimum of 24 weeks - [✓ YES] / N

If yes: 1 increment for above satisfact ry 1

2 increments for outstanding ______

TOTAL NUMBE OF INCREMENTS EARNED: 2

plus curren pay level and increment: 03/13

NEW PAY LEV L/INCREMENT: 03/15

NEW HOURLY ATE: $13.17

U ited States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P.O. Box 158
Keams Canyon, Arizona 86034

IN REPLY REFER TO:

M rch 31, 1988

TO: Lee Cargi e, Counselor

FROM: Principal Polacca Day School

SUBJECT: Non-renew l of contract for 1988-89 school year.

In a duly called s hool board meeting on Marc h 18, 1988, the Polacca Day School Board m de a determination that pr ogrammatic changes are necessary at the F lacca Day School which will requi additional instructional staf . This means that the mor ey pr sly used to pay your salary, n w must be rechanneled to pay salaries for instructional staf . Unfortunately, this pr grammatic change dictates that you ill not be offered a cont act for the next school year (1988-89).

Please be advised at this in no way reflec s negatively on your performance as a C nselor for the Polacca D y School.

If you have any qu stions please feel free t contact me at 737-2581.

Fiddy R. Eastwood
eddy R. Eastwood

NOTIFICATION OF PERSONNEL ACTION

(Last, First, Middle) RGILZ, LAS LAN	2. SSN 464-25-1207	3. Sensitivity 1	4. Date of Birth 11-23-23
Preference 1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt./30% Comp.	6. Serv. Comp. Date (Leave) 04-28-81	7. Tenure C	8. Retirement K
COVERED BY FERS AND	10. FLSA E—Exempt N—Nonexempt	11. F	12. Citizenship 1—US 8—Other
Effective Date -10-87	15. Annuitant Indicator 1—Reemployed 2—RETD	16. Work Schedule F—Full-time P—Part-time	17. (Reserved for OPM Use)
19-B. Nature of Action PLACEMENT IN PAY STATUS	19-A. NOAC	19-B. Nature of Action	
19-D. Authority FPM CH 630	19-C. Auth Code	19-D. Authority	
19-F. Authority	E. Auth Code	19-F. Authority	

8-10-87
to
6-3-88

FROM: Position Title and Number

TO: Position Title and Number
COUNSELOR
0100 -041

Name and Location of Employing Office

Name and Location of Employing Office
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS CANYON
PHOENIX, ARIZONA

Pay Plan & Occupational Code	23. Grade or Level	24. Step or Rate	25.	28. Pay Basis	29. Pay Plan & Occupational Code	30. Grade or Level	31. Step or Rate	32. Salary	33. Pay Basis
					CY 1710	03	10	$12.02	PH

Duty Station
KEAMS CANYON, NAVAJO,

35. Position Occupied
2
1—Competitive 2—Excepted 3—SES General 4—SES Career

38. Appropriation Code (Optional)

Remarks
CODE "K" IN BLOCK 8 INDICATES COVERAGE BY FERS AND FICA

posted
3/22/88
m

RECEIVED
MAIL ROOM
1987 AUG 25 P 1:30
BIA.HOPI AGENCY

Approval
Name of Approving Official
AUTHORIZING OFFICIAL
Signature/Authentication of Approving Official

B. Date
08-10-87

A2515EAHH7173A

Employing Department or Agency
DEPT. INT. OF INDIAN AFF

39. FPMIS Data

A. Supv. or Nonsupv. Ind. 8	B. VEV IND N	C. PRD 0	D. Barg. Unit Status 0065	E. Functional Class 00	
F. Educational Level	G. Year Degree Attained	H. Academic Discipline	I. Agency Code IN06		
J. Location Code 04-0255-017			K. SON 1534	[redacted]	
[redacted]	N.	O.	P. 5614135	Q.	

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Standard Form 52
Rev. November 1985
U.S. Office of Personnel Management
FPM Chapter 296

REQUEST FOR PERSONNEL ACTION

347

Part I—Requesting Office—Also, complete Part II, items 1 and 20-34 as necessary.

For Agency Use:

B. For Additional Information Call (Name and Telephone Number):

Personnel Action Requested: Conv to Exc Appt NTE 08-09-88

D. Proposed Effective Date: 08-10-87

E. Requested by (Signature, Title, and Date):

Position Action Requested:

G. Proposed Effective Date:

H. Approved by (Signature, Title, and Date): Acting Superinten nt for Education JUL 10 198

Remarks by Requesting Office (Note Supervisors: If action requested is employee resignation and if you know of additional or conflicting reasons for resignation, please state these facts on a separate sheet and attach to SF 52.)

Education Employment (School-Year) contract attached.

Part II—For Preparation of SF 50

Name (Last, First, Middle): CARGILE, Lee Lane

2. SSN: 464-28-1207

3. Position Sensitivity (Opt): 1

4. Date of Birth: 11-23-23

Veteran Preference: 2 (1—None; 2—5 Pt; 3—10 Pt Disab; 4—10 Pt Comp; 5—10 Pt Other; 6—10 Pt /30% Comp)

6. Serv Comp Date (Leave): 06-29-81

7. Tenure: 0

8. Retirement: K

FEGLI: C Covered by basic fegli

10. FLSA: E (E—Exempt; N—Nonexempt)

11. Sex: M

12. Citizenship: 1 (1—US; 8—Other)

13. Comp Level (Opt):

Effective Date: 08-10-87

15. Annuitant Indicator: 9 (1—Reempl Ann CS; 2—RETO; 3—RETM; 4—RETO & CS; 5—RETM & CS; 9—Not Applicable)

16. Work Schedule: G (F—Full-time; P—Part-time; I—Intermittent; G—FT Seasonal; Q—PT Seasonal; J—INT Seasonal; H—FT On Call; R—PT On Call)

17. (Reserved for OPM Use):

18-A NOAC: 571

18-B Nature of Action: Conv to Exc Appt NTE 08-09-88

18-C Auth Code: ZLM

18-D Authority: P.L. 95-561

18-E Auth Code:

18-F Authority:

19-A NOAC: 280

19-B Nature of Action: Placement i Pay Status

19-C Auth Code: CUL

19-D Authority: FPM Chapte 340

19-E Auth Code:

19-F Authority:

20. FROM: Position Title and Number: Counselor, 561.4135T

27. TO: Position Title and Number: Counselor, 561.4 35T

21. Name and Location of Employing Office:
Bureau of Indian Affairs
Phoenix Area Headquarters
Hopi Agency, Polacca Day School
Keams Canyon, Arizona

28. Name and Location of Employing Office: Same as #21.

22 Pay Plan & Occupational Code	23 Grade or Level	24 Step or Rate	25 Salary	26 Pay Basis	29 Pay Plan & Occupational Code	30 Grade or Level	31 Step or Rate	32 Salary	33 Pay Basis
CY-1710	03	10	$12.02	PH	CY-1710	03	11	$12.56	PH

Duty Station: Polacca, Navajo, Arizona

35. Position Occupied: 2 (1—Competitive; 2—Excepted; 3—SES; 4—SES)

neral
Reserved

36. Appropriation Code (Optional):

7. Remarks:

Eligible to continue health benefits, life insurance civil servi e retirement, sick leave and school vacation leave. Contract covers period from 08-10-87 hrough 06-03-88. Appointmen is of a recu-ring nature and may be renewed for subsequent school year.

Total hours in pay status for computing average pay for contract eriod 11-03-86 to 05-29-87 (1200 hours).

JUL 13 1987

CONTINUED ON REVERSE SIDE

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Previous Edition Usable
NSN 7540-01-109-8814

tandard Form 52
ev. November 1985
. Office of Personnel Management
Pd Chapter 296

REQUEST FOR PERSONNEL ACTION

347

art I—Requesting Office—Also. compl Part II, items 1 and 20-34 as necessary.

For Agency Use

B For Additional Information Call (Na and Telephone Number)

Personnel Action Required: Conv to Exc Appt NTE 08-09-88

D Proposed Effective Date: 08-10-87

E Requested by (Signature, Title, and te)

Position Action Requested

G Proposed Effective Date

H Approved by (Signature, Title, and e): Acting Superinten t for Education JUL 10

Remarks by Requesting Office (Note Supervisors: If as equested is employee resignation and if you know of additional or conflicting reasons f the resignation, please state these facts on a separate s and attach to SF 52.)

Education Emp vment (School-Year) contract attached.

art II—For Preparation of SF 50

Name (Last, First, Middle): CARGILE, Lee Lane

2 SSN: 464-28-1207

3 Position Sensitivity (Opt): 1

4 Date of birth: 11-23-23

Veteran Preference: 2
1—None 3—10 Pt C
2—5 Pt 4—10 Pt C
5—10 Pt Other
6—10 Pt /30% Comp

6 Serv. Comp. Date (Leave): 06-29-81

7 Tenure: 0

8 Retirement: K

FEGLI: C Covered by basic f li

10 FLSA: E
E—Exempt
N—Nonexempt

11 Sex: M

12 Citizenship: 1
1—US
8—Other

13 Comp L

4 Effective Date: 08-10-

15 Annuitant: 9
emp Ann CS 3—RETM 5—RETM & CS
10 4—RETD & CS 9—Not Applicable

16 Work Schedule: G
F—Full-time G—FT Seas
P—Part-time Q—PT Seas
I—Intermit.
J—INT Seasonal
H—FT On Call
R—PT ON Call

17 (Reserved for OPM Use)

8-A NOAC: 571

18-B Nature of Action: Conv to Exc Appt NTE 08-09-88

8-C Auth Code: ZLM

18-D Authority: P.L. 95-561

8-E Auth Code

18-F Authority

19-A NOAC: 280

19-B Nature of Action: Placement Pay Status

19-C Auth Code: CUL

19-D Authority: FPM Chapte 340

19-E Auth Code

19-F Authority

20 FROM: Position Title and Number: Counselor, 561.4135T

27 TO: Position Title and Number: Counselor, 561. 35T

21 Name and Location of Employing Office:
Bureau of Indian Affairs
Phoenix Area Headquarter
Hopi Agency, Polacca Day chool
Keams Canyon, Arizona

28 Name and Location of Employing (: Same as #21.

22 Pay Plan & Occupational Code	23 Grade or Level	24 Step or Rate	25 Salary	26 Pay Basis	29 Pay Plan & Occupational Code	30 Grade or L	31 Step or Rate	32 Salary	33 Pay Ba
CY-1710	03	10	$12.02	PH	CY-1710	03	13	$12.56	PH

34 Duty Station: Polacca, Navajo, Arizona

35 Position Occupied: 2
1—Competitive 3—SES
2—Excepted 4—SES
neral
reer Reserved

36 Appropriation Code (Optional)

37 Remarks

Eligible to continue hea th benefits, life insurance civil serv e retirement, sick leave and school vacation leav . Contract covers period from 08-10-87 hrough 06-03-88. Appoint is of a recu-ring nature and may be renewed for subsequent schoo year.

Total hours in pay statu for computing average pay for contract eriod 11-03-86 to 05-29-8 (1200 hours).

JUL 13 1987

CONTINUED ON REVERSE SIDE

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Previous Edition Usable
NSN 7540-01-109-8814

U ited States Department of the Ir erior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
EDUCATION EMPLOYMENT CONTRACT

School-Year CONTRACT
(Type of Contract)

Polacca Day SCHOOL
(Location)

This is a contract o employment between the Department of he Interior, Bureau of Indian Affairs, Offi e of Indian Education Programs design ed representative for the Polacca Day School at Polacca, Arizon and Lee L. Cargile, herein called employee. BOTH ARTIES MUTUALLY AGREE:

1. The employee sha l be employed by the Office of Indian Education Programs (OIEP) for a period fro August 10th, 1987 to June 3rd, 1988 as Counselor at Polacca Day Sc ool.

2. The employee sha l, during the term of employment, per orm duties pertaining to the position and the duties assigned by the supervisor

3. This contract an the parties hereto are and shall con inue to be subject to applicable laws and regulations of the Federal Governm t and the State in which the positi n is located and to the rules and reg lations of the Department of the Interior, Bureau of Indian Affairs, the OIEP, a the rules and regulations of the loc l school and the local school board.

4. Subject to the p ovisions of the applicable approved b get, the employees shall during the term ereof, receive a salary of $ 12.56 pe hour less required or authorized deduc ions.

5. In the event tha a pre-employment or post-audit revie of the qualifications of the employee sho s that the employee is not suitable o qualified for the positi herein, this con ract may be terminated immediately by he OIEP.

6. This contract ma be terminated by the OIEP during the school year and prior to its expiration d te in accordance with the rules and r gulations of the OIEP as set forth in 62 BIAM. Failure to renew this contract oes not constitute termination for ca se by OIEP or for other reasons

DESIGNATED REPRESENT ATIVE OIEP ______________ 7/10/8
(Signature) (Date)
Mr. Paul D. White, Pri cipal
(Title)

EMPLOYEE: Lee L. Cargile June 30, 198
(Date Signed)

CONCURRED BY: Ve Linda Adams (V.C) 7-10, 198
(School Board Chairman) (Date Signed)

Rev. November 1983
U.S. Office of Personnel Management
FPM Chapter 296

REQUEST FOR PERSONNEL ACTION

34

Part I—Requesting Office—Also complete Part II, items 1 and 20-34 as necessary

A. For Agency Use

B. For Additional Information Call (Name and Telephone Number)

C. Personnel Action Requested: Placement in Nonpay Status

D. Proposed Effective Date: 05-30-87

E. Requested by (Signature, Title, and Date)

F. Position Action Requested

G. Proposed Effective Date

H. Approved by (Signature, Title, and Date): Acting Superintendent for Education JUL 10 1987

Remarks by Requesting Office (Note Supervisors: If action requested is employee resignation and if you know of additional or conflicting reasons for the resignation, please state these facts on a separate sheet and attach to SF 52.)
Copy of James E. Frick form attached.
SF 8 issued to employee.

Part II—For Preparation of SF 50

1. Name (Last, First, Middle): CARGILE, Lee Lane
2. SSN: 464-28-1207
3. Position Sensitivity (Opt): 1
4. Date of Birth: 11-23-23
5. Veteran Preference: 2 (1—None; 2—5 Pt; 3—10 Pt Disab; 4—10 Pt Comp; 5—10 Pt Other; 6—10 Pt /30% Comp)
6. Serv. Comp. Date (Leave): 06-29-81
7. Tenure: 0
8. Retirement: K
9. FEGLI: C Covered by basic fegli
10. FLSA: E (E—Exempt; N—Nonexempt)
11. Sex: M
12. Citizenship: 1 (1—US; 8—Other)
13. Comp. Level (Opt)
14. Effective Date: 05-30-87
15. Annuitant Indicator: 9 (1—Reemp. Ann-CS; 2—RETO; 3—RETM; 4—RETO & CS; 5—RETM & CS; 9—Not Applicable)
16. Work Schedule: G (F—Full-time; P—Part-time; G—FT Seas.; Q—PT Seas.; I—Intermit.; J—INT Seasonal; H—FT On Call; R—PT ON Call)
17. (Reserved for OPM Use)
18-A. NOAC: 430
18-B. Nature of Action: Placement in Nonpay Status
18-C. Auth. Code: CUL
18-D. Authority: FPM Chapter 340
18-E. Auth. Code
18-F. Authority
19-A. NOAC
19-B. Nature of Action
19-C. Auth. Code
19-D. Authority
19-E. Auth. Code
19-F. Authority
20. FROM: Position Title and Number: Counselor, 561.4135T
27. TO: Position Title and Number
21. Name and Location of Employing Office:
Bureau of Indian Affairs
Phoenix Area Headquarters
Hopi Agency, Polacca Day School
Keams Canyon, School
28. Name and Location of Employing Office
22. Pay Plan & Occupational Code: CY-1710
23. Grade or Level: 03
24. Step or Rate: 10
25. Salary: $12.02
26. Pay Basis: PH
29. Pay Plan & Occupational Code
30. Grade or Level
31. Step or Rate
32. Salary
33. Pay Basis
34. Duty Station: Polacca, Navajo, Arizona
35. Position Occupied: 2 (1—Competitive; 2—Excepted; 3—SES General; 4—SES Career Reserved)
36. Appropriation Code (Optional)
37. Remarks:

M31 - Reason for placement in nonpay status - condition of employment.

G33 - Service credit for retirement, reduction-in-force, and leave accrual purposes continues for up to a maximum of six months of nonpay time per calendar year.

B39 - FEGLI coverage continues for up to 12 months in a nonpay status.

JUL 13 1987

CONTINUED ON REVERSE SIDE

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Previous Edition Usable
NSN 7540-01-109-8814

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P. O. Box 158
Keams Canyon, Arizona 86034

REPLY REFER TO:

J. 15 1987

Memorandum

To: Phoenix Area Personnel Office, ATTN Delores Harjo

From: Business Manager

Subject: Contract Renewal Documents for Lee F. Cargile
P. L. 95-561 Contract Position Counselor, 561.4136T

Attached are the following CONTRACT RENEWAL documents for above individual:

☑ SF-52, Placement In Nonpay Status
☑ SF-52, Conv. to Exc Appt NTE 08-09-88 & Placement in Pay Status
☑ Education Employment Contract
☑ Declaration of Intent For Renewal/NonRenewal of Contract
☑ Calculation Page Establishing New Increment
☑ Performance Evaluation (Page 3) (Merit Pay Increase)
☑ SF-61, Appointment Affidavit
☑ SF-61B, Declaration of Appointee
/N/A/ ~~College Transcripts (Incentive Pay Increase)~~

REMARKS: Renewed Arizona State Certificate

CALCULATIONS USE TO COMPUTE INCREMENTS AND NEW HOURLY RA OF PAY
FOR CONTRACT REN AL - SCHOOL YEAR 1957-58

EMPLOYEE NAME: Lee L. Cargile
POSITION TITLE: Counselor
Current Pay Leve & Increment: CY-1710-03/10
Current Hourly P Rate: $12.03

ELIGIBLE FOR REN AL INCREMENT:

In pay status fo ninimum of 24 weeks - [✓ YES] / NO

At least satisfa ory rating in all critical elements on nual
performance eval tion ---------------- [✓ YES] / NO

If yes to both: 1st year (eligible for 2 increments) ____
2-4 years (eligible for 1 increment) 2

ELIGIBLE FOR MER INCREMENT(s):

In pay status fo iinimum of 24 weeks - [✓ YES] / NO

If yes: 1 increment for above satisfactory 1
2 increments for outstanding ____

TOTAL NUMBER OF REMENTS EARNED: 3
plus current pay vel and increment: 3/10

NEW PAY LEVEL/IN MENT: 3/13

NEW HOURLY RATE: $ 13.56

Form BIA-4439
Rev. April 1986

44 BIAM 4
Illustration
Page 3 of 7 pag

SECTION D - RATING LEVELS AND SUMMARY PERFORMANCE RATING

NAME: ____________

RATING LEVELS

5. Overall, total performance is Outstanding - of rare, very high quality. (5 Points)
4. Overall, total performance exceeds Fully Successful.
3. Overall, total performance is Fully Successful. (3 Points)
2. Overall, total performance is not Unacceptable, but needs improvement to achieve the Fully Successful level. (2 Points)
1. Performance is Unacceptable - failed to meet established performance standards in one or more critical elements. (1 Point)

Add. to FPM, Release 44-106, 6/2/86

ELEMENTS	RATING LEVEL ASSIGNED AND POINTS
1. Follow student progress	3 = 3
2. Provide Group Counseling	3 = 3
3. Provide Testing Services	4 = 4
4. Maintaining Student Files	4 = 4
5. Provide Individual Counseling	4 = 4
6.	
7.	
8.	
TOTAL ELEMENTS:	TOTAL POINTS: 18

*SUMMARY PERFORMANCE RATING LEVEL: 4

ADVANCE COPY

I have assigned a Summary Performance Rating of Level 4 to Lee Cargile for the period 11-86 to 5-87.

Rating Official — 5/19/87 Date

I have reviewed and discussed this appraisal with my supervisor. My signature does not necessarily mean that I concur in the evaluation and rating.

Lee L. Cargile — Employee — 5/19/87 Date

* Use the formula and procedure on the reverse of this sheet to determine the

Ur ed States Department of the Inte r
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P.O. Box 158
Keams Canyon, Arizona 86034

IN REPLY REFER TO:

March 26, 1

Memorandum

To: Lee L. rgile

From: Princi l,

Subject: Declar ion of Intent for Renewal/Nonrenewal o ntract

☑ I DO INTEN to renew my contract with Polacca Da School for the School-Year 1987-88.

☐ I DO NOT I END to renew my contract with Polacca y School School for the School-Year 1987-88.

I understand that f I renew my contract, it will be for t position of XXXXXXXX Couns or .

I further underst d that the School Board has acted on my ntract renewal and that the Supe ntendent for Education will issue my co ract prior to May 15,1987 and, gree to return the signed original con ct by May 22, 1987. I underst that my rate of pay for the position of XXXXXXXX Counselor will be $12.38*P.H. and includ two increments as an incentive f renewing my contract. (First year cont ct employees will receive two rements for contract renewal, NFFE Appe ix A, Section 9).

Lee L. Car le
Employee's Signat e Date

Superintendent for ducation 4/15/87
Date

*May be amended t reflect additional college work and/or above satisfacto or outstanding performance ratings.

Standard Form 50-B
Rev. January 1982
Office of Personnel Management
FPM Chapter 296

NOTIFICATION OF PERSONNEL ACTION

Name (Last, First, Middle) [illegible]MOUE, T[illegible]Y [illegible]	2. SSN 5/1-[illegible]-[illegible]31[illegible]	3. Position Sensitivity (Opt.) 1	4. Date of Birth 01-04-44
5. Veteran Preference 1–None 2–5 Pt. 3–10 Pt. Disab. 4–10 Pt. Comp. 5–10 Pt. Other 6–10 Pt./30% Comp. 4	6. Serv. Comp. Date (Leave) 02-10-[illegible]7	7. Tenure [illegible]	8. Retirement 1-CS 2-FICA 3-FS 4-None 5-Other 6-CS Spec. K
FEGLI C [illegible]	10. FLSA E-Exempt N-Nonexempt	11. Sex F	12. Citizenship 1-US 8-Other 1
			13. Emp. Lost (Opt.)
14. Effective Date [illegible]-1[illegible]	15. Annuitant Ind 1-Reem... 2 RET... ...CS 3 RETM 4 RETO & CS 5 RETM & CS 9 Not Applicable	16. Work Schedule F—Full-time P—Part-time I—Intermittent G—FT Seasonal Q—PT Seasonal J—INT Seasonal [illegible]	17. (Reserved for OPM Use)
A. NOAC 171	18 B. Nature of Action EXC A[illegible]T [illegible] 1-1	19-A. NOAC	19-B. Nature of Action
C. Auth Code 7[illegible]	18 D. Authority [illegible] 1	19-C Auth Code	19-D. Authority
18-E. Auth Code	18-F. Authority	19-E. Auth Code	19-F. Authority

FROM: Position Title and Number

27. To: Position Title and Number
PRINCIPAL
N[illegible]1110[illegible] -01[illegible]1

21. Name and Location of Employing Office

28. Name and Location of Employing Office
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS CANYON
POLACCA
PHOENIX, ARIZONA

2. Pay Plan & Occupational Code	23. Grade or Level	24. Step or Rate	2... ...ry	26. Pay Basis	29. Pay Plan & Occupational Code	30. Grade or Level	31. Step or Rate	32. Salary	33. Pay Basis
					[illegible] 1710	[illegible]05	01	$13.[illegible]2	PH

34. Duty Station
POLACCA, NAVAJO, AZ

35. Position Occupied
1-Competitive 2-Excepted 3-SES General 4-SES Career Reserved
2

36. Appropriation Code (Optional)

Remarks

CK-DIG: 2

EMPLOYEE IS ENTITLED T INDIAN PREFERENCE AS DEFINED BY THE SEC OF INTERIOR
CODE "K" IN BLOCK 8 IN CATES COVERAGE BY FERS AND FICA
APPOINTMENT AFFIDAVIT ECUTED 08-19-87
CONTRACT COVERS PERIOD 8-19-87 TO 06-30-88.
ELIGIBLE FOR FEGLI, CI L SERVICE RETIREMENT AND HEALTH
BENEFITS. EMPLOYMENT OF A RECURRING NATURE AND
APPOINTMENT MAY BE REN ED FOR SUBSEQUENT SCHOOL YEAR.

posted 3/23/88 7m

NOV 1987
RECEIVED
HOPI AGENCY
EDUCATION

Approval

Title of Approving Official
[illegible]HORIZING OFFICIAL

B. Date
0[illegible]-[illegible]-[illegible]7

Signature/Authentication of Approving Official
Mary L. Je[illegible]an

[illegible]

Employing Department or Agency
INT- [illegible] OF INTERIOR [illegible]

38. FPMIS Data				
A. Sep. or Reemp. Ind. 1	B. VEV IND N	C. PRD [illegible]	D. Barg. Unit Status 8888	E. Functional Class 00
F. Ed. Level	G. Year Degree Attained	H. Academic Discipline	I. Agency Code IN06	
J. Location Code 04-0[illegible]-017			K. SON 1534	[redacted]
[redacted]	N.	O.	P. 5611361	Q.

Std 50
303

1 - Employee Copy

Previous Editions Unusable After 12/31/8[illegible]
NSN 7540-01-110-4807

Un d States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
EDUCATION EMPLOYMENT CONTRACT

YEAR-LONG CONTRACT
(Type of Contract)

POLACCA DAY SCHOOL
(Location)

This is a contract of loyment between the Department of the Interior, Bureau of Indian Affairs, Office Indian Education Programs designated representative for the Polacca Day School at Polacca, Arizona and Teddy Ray Eastwood , herein called employee. BOTH PARTIES MUTUALLY AGREE:

1. The employee shall employed by the Office of Indian Education Programs (OIEP) for a period from ugust 19th , 1987 to June 30th , 1988 as Principal at Polacca Day School .

2. The employee shall uring the term of employment, perform duties pertaining to the position and t duties assigned by the supervisor.

3. This contract and parties hereto are and shall continue to be subject to applicable laws an egulations of the Federal Government and the State in which the position located and to the rules and regulations of the Department of the Interior, B au of Indian Affairs, the OIEP, and the rules and regulations of the local hool and the local school board.

4. Subject to the pro ions of the applicable approved budget, the employees shall, during the term he f, receive a salary of $13.02 per hour less required or authorized deducti .

5. In the event that re-employment or post-audit review of the qualifications of the employee shows at the employee is not suitable or qualified for the position herein, this contr may be terminated immediately by the OIEP.

6. This contract may terminated by the OIEP during the school year and prior to its expiration dat n accordance with the rules and regulations of the OIEP as set forth in 62 BI Failure to renew this contract does not constitute termination for cause OIEP or for other reasons.

DESIGNATED REPRESENTAT OIEP AT Sing / 8/19/87
(Signature) (Date)
Mr. Albert T. Sinquah, Supt. for Education
(Title)

EMPLOYEE: Teddy R Eastwood / 8/19/87 , 1987
(Date Signed)

CONCURRED BY: hool Board Chairman) August 19 , 1987
(Date Signed)

January 1982
U.S. Office of Personnel Management
FPM Chapter 296

NOTIFICATION OF PERSONNEL ACTION

Name (Last, First, Middle): EASTWOOD, TERRY [illegible]

2. SSN: 541-52-5313

3. Position Sensitivity (Opt.): 1

4. Date of Birth: 01-04-44

5. Veteran Preference: 1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. Other 6—10 Pt./30% Comp.

6. Serv. Comp. Date (Leave): [illegible]-1[illegible]-77

7. Tenure:

8. Retirement: K (1-CS 2-FICA 3-FS 4-None 5-Other 6-CS Spec)

FEGLI: K BASIC [illegible] OPTION

10. FLSA: [illegible] E-Exempt N-Nonexempt

11. Sex: M

12. Citizenship: 1 (1-US 8-Other)

13. Emp. Local (Opt.):

14. Effective Date: [illegible]-31-87

15. Annuitant Ind: 1-Reem 2 RET

Retirement: 3-RETM 4 RETO & CS 5-RETM & CS 9-Not Applicable

16. Work Schedule: F (F—Full-time P—Part-time I—Intermittent G—FT Seasonal Q—PT Seasonal J—INT Seasonal)

17. (Reserved for OPM Use)

18-A. NOAC: [illegible]61

18-B. Nature of Action: FEGLI CHANGE

18-C. Auth Code: DPM

18-D. Authority: [illegible]

18-E. Auth Code:

18-F. Authority:

19-A. NOAC:

19-B. Nature of Action:

19-C. Auth Code:

19-D. Authority:

19-E. Auth Code:

19-F. Authority:

20. FROM: Position Title and Number
PRINCIPAL
H651100 -01[illegible]1

21. Name and Location of Employing Office
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS CAN
POLACCA
PHOENIX, ARIZONA

22. Pay Plan & Occupational Code: CE 1710
23. Grade or Level: 05
24. Step or Rate: 01
Salary: $13.02
26. Pay Basis: PH

27. To: Position Title and Number
PRINCIPAL
H651100 -01361

28. Name and Location of Employing Office
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS CANYON
POLACCA
PHOENIX, ARIZONA

29. Pay Plan & Occupational Code: CE 1710
30. Grade or Level: 05
31. Step or Rate: 01
32. Salary: $13.02
33. Pay Basis: PH

35. Duty Station: POLACCA, NAVAJO, AZ

36. Position Occupied: 2 (1-Competitive 2-Excepted 3-SES General 4-SES Career Reserved)

38. Appropriation Code (Optional)

CK-DIG: 2

37. Remarks
EMPLOYEE IS ENTITLED T INDIAN PREFERENCE AS DEFINED BY THE SEC OF INTERIOR
CODE "K" IN BLOCK 8 INDICATES COVERAGE BY FERS AND FICA

posted 3/23/88 m

NOV 1987
RECEIVED
HOPI AGENCY
EDUCATION

38. Approval
A. Title of Approving Official: AUTHORIZING OFFICIAL
Signature/Authentication of Approving Official: Mary L. Julian
A2515D4HH74[illegible]FA
B. Date: 09-[illegible]-87

39. FPMIS Data
A. Supv. or Manager. Ind.: 1
B. VEV IND: N
C. PRD: 0
D. Barg. Unit Status: 8883
E. Functional Class: 0C
F. Ed. Level:
G. Year Degree Attained:
H. Academic Discipline:
I. Agency Code: IN06
J. Location Code: 04-0388-017
K. SON: 1534
[redacted]
[redacted]
N.
O.
P. 5611361
Q.

40. Employing Department or Agency: INT-BUR OF INDIAN AFF

Part

1 - Employee Copy

Previous Editions Unusable After 12/31/8

Standard Form 50-B
Rev. January 1984
U.S. Office of Personnel Management
FPM Chapter 296

NOTIFICATION OF PERSONNEL ACTION

Name (Last, First, Middle) [illegible]ASTWOOD, TERRY [illegible]	2. SSN [illegible]	3. Position Sensitivity (Opt) 1	4. Date of Birth 01-34-44
Veteran Preference 1—None 2—5 Pt 3—10 Pt Disab 4—10 Pt Comp 5—10 Pt Other 6—10 Pt /30% Comp	6. Serv. Comp. Date (Leave) [illegible]-1-[illegible]	7. Tenure [illegible]	8. Retirement K
FEGLI L [illegible] AND STANDARD [illegible]	10. FLSA E—Exempt N—Nonexempt	11. Sex [illegible]	12. Citizenship 1—US 8—Other [illegible] / 13. Comp. Level (Opt)
Effective Date [illegible]-31-87 15. Annuitant Indicator 1—Re[illegible] 2—RE[illegible] [illegible]-CS 3—RETM 4—RETO & CS 5—RETM & CS 9—Not Applicable	16. Work Schedule F—Full-time P—Part-time I—Intermittent G—FT Seasonal Q—PT Seasonal J—INT Seasonal		17. (Reserved for OPM Use)

18-A NOAC [illegible] 18-B. Nature of Action [illegible]	19-A NOAC 19-B. Nature of Action [illegible] CHANGE
18-C Auth Code 18-D Authority	19-C Auth Code 19-D. Authority [illegible] 870
18-E Auth Code 18-F Authority	19-E Auth Code 19-F. Authority
FROM: Position Title and Number PRINCIPAL [illegible]	27. TO: Position Title and Number PRINCIPAL [illegible] -01361
Name and Location of Employing Office PHOENIX AREA HDQTRS HOPI AGENCY KEAMS CANYON POLACCA PHOENIX, ARIZONA	28. Name and Location of Employing Office PHOENIX AREA HDQTRS HOPI AGENCY KEAMS CANYON POLACCA PHOENIX, ARIZONA

22. Pay Plan & Occupational Code	23. Grade or Level	24. Step or Rate	25. [illegible]ry	26. Pay Basis	29. Pay Plan & Occupational Code	30. Grade or Level	31. Step or Rate	32. Salary	33. Pay Basis
[illegible] 1710	[illegible]	01	[illegible]	[illegible]	GS 1710	05	01	$13.02	PH

Duty Station
POLACCA, NAVAJO, AZ

35. Position Occupied 1—Competitive 2—Excepted 3—SES General 4—SES Career Reserved
36. Appropriation Code (Optional)

Remarks
CK-DIGIT-2
EMPLOYEE IS ENTITLED [illegible] INDIAN PREFERENCE AS DEFINED BY THE SEC OF INTERIOR
CODE "K" IN BLOCK 30 INDICATES COVERAGE BY FERS AND FICA
CORRECT ITEM 20 FROM [illegible]

Posted
3/23/88
jm

NOV 1987
RECEIVED
HOPI AGENCY
EDUCATION

Approval

Title of Approving Official [illegible] OFFICER	B. Date 11-[illegible]-87	39. FPMS Data A. Supv or Nonsupv Ind 1	B. VEV IND N	C. PRD 0	D. Barg. Unit Status [illegible]	E. Functional Class [illegible]
Signature/Authentication of Approving Official Mary L. [illegible]	[illegible]	F. Educational Level /	G. Year Degree Attained	H. Academic Discipline	I. Agency Code IN[illegible]	
		J. Location Code [illegible]-017			K. SON 1534	[redacted]
Employing Department or Agency [illegible]		[redacted]	N.	O.	P. 5611561	Q.

Standard Form 50-B
Rev. January 1983
U.S. Office of Personnel Management
FPM Chapter 296

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle): EASTWOOD, TEDDY R.
2. SSN: 541-52-9313
3. Position Sensitivity: 1
4. Date of Birth: 01-04-44
5. Veteran Preference (1-None, 2-5 Pt, 3-10 Pt Disab, 4-10 Pt Comp, 10 Pt Other, 10 Pt 30%Comp): 1
6. Serv. Comp. Date (Leave): 08-19-87
7. Tenure: 0
8. Retirement (1-CS, 2-FICA, 3-FS, 4-None): K
9. FEGLI: L
10. FLSA (E-Exempt, N-Nonexempt): E
11. Sex: M
12. Citizenship (1-US, 8-Other): 1
14. Effective Date: 01-03-88
15. Annuitant Indicator (empl Ann-CS, 3-RETM, 4-RETO&CS, 5-RETM&CS, 9-NotApplicable): 9
16. Work Schedule (F-Full-time, P-Part-time, I-Intermittent, G-FT Seasonal, Q-PT Seasonal, J-INT Seasonal): F
17. (Reserved for OPM Use)
18-A. NOAC: 894
18-B. Nature of Action: PAY ADJ
18-C. Auth Code: ZLM
18-D. Authority: PUBLIC LAW 95- 1
18-E. Auth Code:
18-F. Authority:
19-A. NOAC:
19-B. Nature of Action:
19-C. Auth Code:
19-D. Authority:
19-E. Auth Code:
19-F. Authority:
20. FROM Position Title and Number:
21. Name and Location of Employing Office:
27. To Position Title and Number:
PRINCIPAL
H651100 -01861
28. Name and Location of Employing Office:
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS CANYON
POLACCA
PHOENIX, ARIZONA

22. Pay Plan & Occupational Code	23. Grade or Level	24. Step or Rate	25. Salary	26. Pay Basis	29. Pay Plan & Occupational Code	30. Grade or Level	31. Step or Rate	32. Salary	33. Pay Basis
CE 1710	05	0	$13.02	PH	CE 1710	05	01	$13.28	PH

34. Duty Station: POLACCA, NAVAJO, AZ
35. Position Occupied (1-Competitive, 2-Excepted, 3-SES General, 4-SES Career Reserved): 2
36. Appropriation Code (Optional):
37. Remarks

Posted 3/23/88

FEB 1988
RECEIVED
HOPI AGENCY
EDUCATION

38. Approval
A. Title of Approving Official
B. Date
C. Signature/Authentication of Approving Official: Lila Jean ed Hill
A251534HHI0764
39. FPMIS Data

A.	B. VEV IND	C. PRD	D.	E. Functional
1	N	0	8888	0

F. Ed. Level
I. Agency Code: IN06
J. Location Code: 04-0382-017
K. SOR: 1534
L.
M.
N.
O.
P.
Q.

40. Employing Department or Agency: INT-BUR OF INDIAN AF

5 Part
50-303

1-Employee Copy

POLACCA DAY SCHOOL (602) 737-2581
POLACCA, ARIZONA 86042
COMMITTED TO EDUCATIONAL EXCELLENCE

RECEIVED 5/26/88

May 26, 1988

Mr. Robert Jer ns
Acting Superir ndent
Hopi Agency, I nch of Education
P.O. Box 568
Keams Canyon, izona 86034

Dear Superinte ent Jenkins:

1. This lette constitutes my formal resignation from the B.I.A. effective the th day of June, 1988.

2. I am reque ing, though, that my current contract be extended until July 15, 988, so that I can bring important routine school matters to clo re. I would also like to participate in the formal selection of m replacement. I have much critical information that will assist th replacement in having a productive year.

3. If the abo request is not acceptable, I do strongly recommend that a tempora principal be hired from available cadre not now employed as st f of Polacca Day School.

4. I need to rk closely with Mr. David Talayumptewa in the next few weeks to a ure that the best possible professionals are hired to fill vacant ositions. Also, I do need to make some minor budget revisions to a ure the large expenditures made at this time of year are done thin proper lines.

5. In sum, I nt to leave Polacca Day School and feel assured it is fully ready or the coming school year.

Sincerely,

Teddy R. Eastwood

Teddy R. Eastwood,
Principal
Polacca Day School

cc: Mr. Larry amana, President of the PDS Board
All PDS T ching Staff
[redacted]
Mr. Bobby ean
Mr. Alber Singuah
Dr. Ken R s

Forwarding:
Box 1115
Kotzebue, AK
99752

U.S. Office of Personnel Management
Chapter 296

N TIFICA ION OF PERSONNEL AC N

Name (Last, First, Middle): EASTWOOD, TEDDY [illegible]
2. Social Security Number: [illegible]
3. Date of Birth: 01-14-44
4. Effective Date: [illegible]

FIRST ACTION
Code: 317 | 5-B. Nature of Action: RESIGNATION
Code: RPM | 5-D. Legal Authority: REG 715.202
Code: | 5-F. Legal Authority:

SECOND ACTION
6-A. Code | 6-B. Nature of Action
6-C. Code | 6-D. Legal Authority
6-E. Code | 6-F. Legal Authority

FROM: Position Title and Number
PRINCIPAL
[illegible]
[illegible]5110C -01E41

Pay Plan	9. Occ. Code	10. Grade or Level	11. Step or Rate	12. Salary	13. Pay Basis
CE	1710	05	01	[illegible]	[illegible]

Name and Location of Position's Organization
PHOENIX AREA HDQTRS
HOPI AGENCY KEAMS C ON
POLACCA
PHOENIX, ARIZONA

15. TO: Position Title and Number

16. Pay Plan	17. Occ. Code	18. Grade or Level	19. Step or Rate	20. Salary/Award	21. Pay Basis

22. Name and Location of Position's Organization

EMPLOYEE DATA
Veterans Preference: 1
1—None 2—5 Pt. 3—10 Pt. Disab. 4—10 Pt. Comp. 5—10 Pt. 6—10 Pt.
FEGLI: L AND STANDARD
Comp
24. Tenure: 0—None 1—Permanent 2—Conditional 3—Indefinite
25. Agency Use
26. Veterans Preference for R: ☐ YES ☐ NO
28. Annuitant Indicator: 1—Reempl. Ann-CS 2—RETO 3—RETM 4—RETO & CS 5—RETM & CS 9—Not Applicable
29. Pay Rate Determinant
Retirement Plan: K FERS AND FICA
31. Service Comp. Date (Leave): [illegible]
32. Work Schedule: F—Full-time P—Part-time I—Intermittent G—FT Seasonal Q—PT Seasonal J—INT Seasonal H—FT On Call R—PT On Call
33. Part-Time Hours Per Biweekly Pay Period

POSITION DATA
Position Occupied: 2
1—Competitive Service 2—Excepted Service 3—SES General 4—SES Career Reserved
35. FLSA Category: E—Exempt N—Nonexempt
36. Appropriation Code
37. Bargaining Unit Status
Duty Station Code: 04-03 [illegible]
39. Duty Station (City—County—State or Overseas Location): [illegible], NAVAJO, AZ
Agency Data: CO
41. N
43. 1
44. NON [illegible]

Remarks:
EMPLOYEE GAVE NO REAS FOR RESIGNATION.
LUMP-SUM PAYMENT TO BE MADE FOR ANY UNUSED ANNUAL LEAVE.
EMPLOYEE IS ENTITLED INDIAN PREFERENCE AS DEFINED BY THE SEC OF INT-RIGHT
CODE "K" IN BLOCK 30 [illegible] COVERAGE BY FERS AND FICA
FORWARDING ADDRESS: [illegible] BOX 111
[illegible] K [illegible], ALASKA 9752
TOTAL HOURS IN PAY STATUS FOR COMPUTING AVERAGE PAY FOR
CONTRACT PERIOD 09-1 7 TO 06-30-8 (1818 HOURS).
AGENCY FINDING NO OTHER INFORMATION AVAILABLE.

RECEIVED
AUG - 4 1988
HOPI AGENCY
ADMINISTRATION

posted 8-5-88 [illegible]

Employing Department or Agency: INT-BUR OF INDIAN AFF
Agency Code: IN06
48. Personnel Office ID: 1524
Approval Date: 07-27-88
50. Signature/Authentication and Title of Approving Official: Eileen F. Johnson
AUTHORIZING OFFICIAL

SEE OVER FOR IMPORTANT INFORMATI

1—Employee Copy—Keep for Future Reference

Previous Editions Unusable After 6/30/89
NSN 7540-01-248-1181

[illegible] FORM 49 (Rev. 11-
Prescribed by
U.S. Civil Service Commission
FPM Chapter 736
3049-106

Form Approved
OMB No. 3

IN UIRY FOR UNITED STATES GOVERNMENT USE ONLY

Dr. Ja Kreitinger
Rt. 1
Three I rk, MT 59752

The person identified b w has been appointed to or is an applicant for the position shown. To help us determine whed person is loyal, trustwo y, and of good character, we ask that you answer all questions on the front and back of this f fully and specifically as ou can. The information you provide, including your identity, will be disclosed to the person fied below if he or she ould so request, unless you indicate in item 7 on the reverse side of this form that you do no your identity to be disc sed.

AUG 1987

Please use this for when replying show the case num ber if you reply l letter. A postage-fr envelope is enclos for your reply.
Please reply promptly.

Date: August 10, 1987
Name: Teddy Eastwood
D.O.B: 1/4/44
S.S.N: 541-52-9313
Position: Elementary, Principal

OTHER IDENTIFYING NUMBE		
DATES OF CLAIMED EMPLOYMEN	KIND OF POSITION HELD	BRANCH OR PLANT AT WHICH EMPLOYED

TO BE COMPLETED BY ADDRESSEE ON THIS INQUIRY

1. HOW LONG HAVE YOU KN N THIS PERSON? 6 YEARS ____ MONTHS	2. IN WHAT CAPACITY WERE YOU ASSOCIATED WITH THIS PERSON?: ☐ EMPLOYER • ☒ SUPERVISOR • ☐ CO-WORKER ☐ FRIEND ☐ OTHER *(Specify)* ______

• If you were the emplo r or supervisor, complete the following: (A, B, C, D, E, and F)

(A) TITLE OF THIS PERSON'S P ITION Special Progr ns Director	(B) DATE EMPLOYED: 1977	(C) DATE SEPARATED: 1984
(D) REASON FOR LEAVING: Alfred University	(E) IF DISCHARGED FOR CAUSE, WAS EMPLOYEE NOTIFIED OF REASON? ☐ YES ☐ NC (F) IS THIS PERSON ELIGIBLE FOR REHIRE? ☒ YES ☐ NC *(If "NO," briefly, why not)*	

(CONTINUE ON REVERSE SIDE)

OPTIONAL FORM 48 (Rev. 11-
Prescribed by
U.S. Civil Service Commission
FPM Chapter 736
5049-106

Form Approved
OMB No. 50

IN(JIRY FOR UNITED STATES GOVERNMENT USE ONLY

Mrs. S a Hornberger
Box 69
ILamna, Alaska 99606

The person identified b w has been appointed to or is an applicant for the position shown. To help us determine wheth person is loyal, trustwo y, and of good character, we ask that you answer all questions on the front and back of this f fully and specifically as ou can. The information you provide, including your identity, will be disclosed to the person fied below if he or she ould so request, unless you indicate in item 7 on the reverse side of this form that you do not your identity to be disc ed.

Please use this for
when replying
show the case nu
ber if you reply
letter. A postage-fr
envelope is enclos
for your reply.
Please reply promptly.

Date: August 10, 1987

Name: Teddy Eastwood

D.O.B: 1/4/44

S.S.N: 541-52-9313

Position: Elementary, Principal

OTHER IDENTIFYING NUMB

DATES OF CLAIMED EMPLOYMEN	KIND OF POSITION HELD	BRANCH OR PLANT AT WHICH EMPLOYED

TO BE COMPLETED BY ADDRESSEE ON THIS INQUIRY

1. HOW LONG HAVE YOU KNC THIS PERSON?
since around 197 YEARS MONTHS

2. IN WHAT CAPACITY WERE YOU ASSOCIATED WITH THIS PERSON?: ☐ EMPLOYER • ☐ SUPERVISOR • ☐ CO-WORKER ☐ FRIEND ☐ OTHER (Specify) President of the board of the school district for which Mr. Eastwood worked

• If you were the emplo or supervisor, complete the following: (A, B, C, D, E, and F)

(A) TITLE OF THIS PERSON'S P TION	(B) DATE EMPLOYED:	(C) DATE SEPARATED:
Ted was in charge c special ed. and special program as I recall	I don't recall dates	don't recall

(D) REASON FOR LEAVING:
to go back to grad. school

(E) IF DISCHARGED FOR CAUSE, WAS EMPLOYEE NOTIFIED OF REASON? ☐ YES ☐ NO

(F) IS THIS PERSON ELIGIBLE FOR REHIRE? xx☒ YES ☐ NO
(If "NO," briefly, why not)
Ted was a very loyal and hard working dedicated educator

(CONTINUE ON REVERSE SIDE)

[illegible] FORM 57 (Rev 11-7[illegible]
Prescribed by
U.S. Civil Service Commission
FPM Chapter 736
5049-106

Form Approved
OMB No 50-[illegible]

INQ IRY FOR UNITED STATES GOVERNMENT USE ONLY

AUG 1987
RECEIVED

Dr. Jan ; Barnett
Lake & eninsula-School District
Box 49
King S non, AK 99613

The person identified bel has been appointed to or is an applicant for the position shown. To help us determine whether person is loyal, trustwort and of good character, we ask that you answer all questions on the front and back of this for fully and specifically as can. The information you provide, including your identity, will be disclosed to the person id fied below if he or she s ld so request, unless you indicate in item 7 on the reverse side of this form that you do not your identity to be discl l.

Please use this form when replying or show the case number if you reply by letter. A postage-free envelope is enclosed for your reply.
Please reply promptly.

Date: August 10, 1987

Name: Teddy Eastwood

D.O.B: 1/4/44

S.S.N: 541-52-9313

Position: Elementary, Principal

OTHER IDENTIFYING NUMBERS

DATES OF CLAIMED EMPLOYMENT	KIND OF POSITION HELD	BRANCH OR PLANT AT WHICH EMPLOYED
7/78 to /84	Support Programs Coordinator	Public Schools

TO BE COMPLETED BY ADDRESSEE ON THIS INQUIRY

1. HOW LONG HAVE YOU KNOW THIS PERSON? 9 YEARS ____ MONTHS

2. IN WHAT CAPACITY WERE YOU ASSOCIATED WITH THIS PERSON?: ☐ EMPLOYER • ☒ SUPERVISOR • ☐ CO-WORKER ☐ FRIEND ☐ OTHER *(Specify)* ____

• If you were the employe or supervisor, complete the following: (A, B, C, D, E, and F)

(A) TITLE OF THIS PERSON'S POS ON: Support Programs oordinator

(B) DATE EMPLOYED: Aug 1978

(C) DATE SEPARATED: June 84

(D) REASON FOR LEAVING: Resignation

(E) IF DISCHARGED FOR CAUSE, WAS EMPLOYEE NOTIFIED OF REASON? ☐ YES ☐ NO

(F) IS THIS PERSON ELIGIBLE FOR REHIRE? ☒ YES ☐ NO
(If "NO," briefly, why not)

(CONTINUE ON REVERSE SIDE)

OPTIONAL FORM 48 (Rev. 11-
Prescribed by
U.S. Civil Service Commission
FPM Chapter 736
5049-106

Form Approved
OMB No. 50

IN UIRY FOR UNITED STATES GOVERNMENT USE ONLY

Dr. Dav Dickerson
1508 Fa om Drive
Kenai, aska

The person identified b w has been appointed to or is an applicant for the position shown. To help us determine wheth person is loyal, trustwo y, and of good character, we ask that you answer all questions on the front and back of this f fully and specifically a ou can. The information you provide, including your identity, will be disclosed to the person fied below if he or she ould so request, unless you indicate in item 7 on the reverse side of this form that you do no your identity to be dis sed.

Please use this fo when replying r show the case nu ber if you reply y letter. A postage-f e envelope is enclo l for your reply.
Please reply promptly

Date: August 10, 1987

Name: Teddy Eastwood

D.O.B: 1/4/44

S.S.N: 541-52-9313

Position: Elementary, Principal

OTHER IDENTIFYING NUM S

DATES OF CLAIMED EMPLOYME	KIND OF POSITION HELD	BRANCH OR PLANT AT WHICH EMPLOYED

TO BE COMPLETED BY ADDRESSEE ON THIS INQUIRY

1. HOW LONG HAVE YOU K N THIS PERSON? 10 YEARS ___ MONTHS

2. IN WHAT CAPACITY WERE YOU ASSOCIATED WITH THIS PERSON?: ☐ EMPLOYER • ☑ SUPERVISOR • ☐ CO-WORKER ☐ FRIEND ☐ OTHER *(Specify)* ______

• If you were the empl r or supervisor, complete the following: (A, B, C, D, E, and F)

(A) TITLE OF THIS PERSON'S SITION	(B) DATE EMPLOYED:	(C) DATE SEPARATED:
Title I C rdinator	1976-78	8/78

(D) REASON FOR LEAVING:
To Acc t
other a n
positio
with La e
Elemen
School st

(E) IF DISCHARGED FOR CAUSE, WAS EMPLOYEE NOTIFIED OF REASON? ☐ YES ☐ N

(F) IS THIS PERSON ELIGIBLE FOR REHIRE? ☒ YES ☐
(If "NO," briefly, why not)

(CONTINUE ON REVERSE SIDE)

U ted States Department of the Interior

BUREAU OF INDIAN AFFAIRS

HOPI AGENCY

EDUCATION EMPLOYMENT CONTRACT

SCHOOL-YEAR CONTRACT
(Type of Contract)

HOPI JR/SR HIGH SCHOOL
(Location)

This is a contract o employment between the Department of the Interior, Bureau of Indian Affairs, Offic of Indian Education Programs designated representative for the Hopi Jr/Sr Hi h School at Polacca, Arizona and Nan Talahongva , herein called employee. BOTH PARTIES MUTUALLY AGREE:

1. The employee sha be employed by the Office of Indian Education Programs (OIEP) for a period fro August 10th, 1987 to June 3rd, 1988 as Teacher, (Engl sh) at the Hopi Jr/Sr High School.
2. The employee shal , during the term of employment, perform duties pertaining to the position and e duties assigned by the supervisor.
3. This contract and the parties hereto are and shall continue to be subject to applicable laws a d regulations of the Federal Government and the State in which the positio is located and to the rules and regulations of the Department of the Interior, ureau of Indian Affairs, the OIEP, and the rules and regulations of the loca school and the local school board.
4. Subject to the pr visions of the applicable approved budget, the employees shall, during the term h reof, receive a salary of $11.48 per hour less required or authorized deduct ons.
5. In the event that a pre-employment or post-audit review of the qualifications of the employee sho that the employee is not suitable or qualified for the position herein, this cont act may be terminated immediately by the OIEP.
6. This contract may be terminated by the OIEP during the school year and prior to its expiration d e in accordance with the rules and regulations of the OIEP as set forth in 62 B AM. Failure to renew this contract does not constitute termination for caus by OIEP or for other reasons.

DESIGNATED REPRESENT IVE OIEP Nan Talahongva / 5/27/87
(Signature) Richard Torralba 6-11-87 (Date)
Mr. Richard D. Torralba, Principal
(Title)

EMPLOYEE: ______ ______________________ / ______________, 19__
(Date Signed)

CONCURRED BY: ______ ______________________ / ______________, 19__
(School Board Chairman) (Date Signed)

hool Board wished to not
n off on contract.

March 31, 1987

Richard D. To ralba, Principal

Governing Boa 's Recommendation for Non-renewal of Contracts

Albert T. Sinc ah, Supt. for Education

Attached is Th Hopi Junior/Senior High School Governing Board's recommendation for non-r newal of contracts for the 1987-88 School Year.

I recommended ontract renewals for all my teachers and instructional aides except f r one individual, Mr. Russell Myers, III, a high school Math instructo . Mr. Myers received a one rating on a critical element of his perform nce evaluation, thereby giving justification for non-renewal of his contrac .

The Board is r commending non-renewals for teachers who received a two rating on thei critical or required elements.

Please advise to your decision as soon as possible.

Attachment (1)

C O R R E C T E D MINUTES C O R R E C T E D

THE HOPI JR./SR. HIGH SCHOOL GOVERNING BOARD
TUESDAY, MARCH 03, 1987
THE HOPI JR./SR. HIGH SCHOOL, POLACCA, AZ

I. CALL TO ORDER:

The regular meeting of the Governing Board was called to order at 9:00 a.m. by Mr. Ferrell Secakuku, Chairperson. Members present were Mr. Secakuku, Ms. Ross, Mr. Nuvayestewa and Mr. Honahni. Members absent were Mrs. Long and Ms. Masayesva. Administration present were Mr. Torralba and Mrs. Kowena.

II. APPROVAL OF MINUTES:

Minutes of February 3, 1987 were read by Ms. Ross. Mr. Nuvayestewa made a motion to approve the minutes with corrections and additions, seconded by Ms. Ross. Roll call vote, unanimous.

III. APPROVAL OF AGENDA:

Under Section VII. Reports, Item 6 was added, Band Report, Trip to Washington by Mr. Salter. Under Section VIII. Executive Session, Contract Renewals was added.

Mr. Nuvayestewa made a motion to approve the Agenda with additions, seconded by Ms. Ross. Roll call vote, unanimous.

IV. CALL TO THE PUBLIC:

Ms. Ross, speaking as a parent gave her concerns about disciplinary problems at the school and what kind of action can be taken to correct some of these problems. Both of her sons were being picked on and came home with bruises on their faces.

Ms. Ross also mentioned the condition of the gym floor which she considers is unsafe. The contractor should be liable to tear up the floor and do the whole thing over.

V. SPECIAL BUSINESS:

None

VI. ITEMS FOR ACTION:

1. Request to Amend 20.5 Credits to 20 Credits for Graduation.

Mr. Nuvayestewa made a motion to approve request to change graduation requirements from 20.5 to 20 credits and rescind action taken on January 22, 1987 and that it was an oversight on the part of the staff in the calculation of credit hours, seconded by Mr. Honahni. Roll call vote, unanimous.

2. Request by Parent, Mary Alice Figueroa to the Governing Board to Allow her Daughter, Emily to continue School Attendance the Remainder fo this School Year.

3. Athletics - Steve Marshall. Mr. Marshall informed the Board on the upcoming of the Fall sports program. Football will start August 15. According to AIA rules, athletes must be passing five subjects at the end of this semester, they will be eligible starting August. Seniors will not be effected as it will be their last semester of their senior year. Mr. Marshall made changes in the Activities Policy and presented it to the Board, the Board took no action.

4. Transportation. Mr. Torralba reqported that seven new school buses have arrived at the GSA Motor Pool in Holbrook. There was mis-match on license plates which had to be sent back to San Francisco. The buses will be brought to the school as soon as the license plates are taken care of, there will be a total of 14 buses.

5. Student Council - Therese Gardner. Four of the Student coucil members were present to bring topics of concern before the Board. Some of the concerns are as follows: Grade Point Average (GPA), athletic program versus academics. Some of the students are not maintaining a 2.0 GPA but are still permitted to participate in sports. Another concern, the lunch line in the cafeteria is too slow and there is a lack of servers and lack of food. The students would like a variety of snacks served. Teachers are cutting in front of students and are being served more food that the students. The Student Council recommend that there be a drug and alcohol program proposed as 75% of the athletes were participating in substance abuse.

6. Band Trip Report - Mr. Salter reported that the band had raised $14.000. out of $23,000. for their trip to Washington. They had a deadline of April 15 to raise $23,000., also Mr. Salter did not present a revised budget to the Board as was previously requested. It was an Administrative decision that the band trip to Washington be cancelled for this school year.

VIII. EXECUTIVE SE ION: The Hopi Jr./Sr. High School Governing Board convened into Executive Session at approximately 11:00 a.m. and reconvened with the regular session at approximately 11:30 a.m.

Mr. Honahni made a motion to accept the report given by the Principal on contract renewals and that the Board will respond within the mandated time frame of 25 days by certified letter, seconded by Mr. Nuvayestewa. Roll call vote, unanimous.

IX. OLD BUSINES: None

[illegible] Rating Levels an Summary Performance Rating.

Name: Nan Talahongva

Contract: Planning Session by September 11.
Review & feedback sessions
1st. Year Employees: 2nd. Year Employees:
Due by 01) October 11. Due by 01) November 10.
02) December 19. 02) February 10.
03) February 10.

After 2 Years: Due by February 10.

Rating Levels

[illegible] performance standards. (5 Points)

IV. Overall, total performance exceeded performance standards. (4 Points)

III. Overall, total performance met performance standards. (3 Points)

II. Overall, total performance marginally met performance standards. Performance in critical elements was minimally acceptable. (2 Points)

I. Performance failed to meet a performance standard for a critical element. (1 Point)

Use the following formula to determine the Summary Performance Rating Level.

$R = \frac{X}{Y}$ Where R = Range of rating level points
X = The sum of the rating level points assigned to each element.
Y = The total number of critical and required elements.

Rating Levels	Ranges
V.	4.5 - 5.0
IV	3.5 - 4.4
III	2.5 - 3.4
II	1.5 - 2.5
I	1.0 - 1.4

Remember, a rating of Level I on any one critical element results in a Summary Rating of Level I.

Elements	Level	Point
1. Planning	IV	
2. Instruction	IV	
3. Evaluating	V	
4. Management	--	
5. Supervising	III	
6. PROFESSIONALISM	IV	
7.		

TOTAL ELEMENTS: 6

TOTAL POINTS: 22
Summary Performance Rating Level IV

I have assigned a Summary Performance Rating of Level IV for the period 8/25/86 to 12/17/86.

Rating Official 12/17/86
Date

I have reviewed and discussed this appraisal with my supervisor. My signature does not necessarily mean that I concur in the evaluation and rating.

Nan Talahongva 12/17/86
Employee Date

SECTION E - APPRAISAL REVIEW BY REVIEWING OFFICIAL

I have reviewed this appraisal as prescribed by 44 BIAM 430, 1.6I and

☐ I concur. ☐ I am changing the rating to based on the justification provided in SECTION F.

EXIBIT J

December 14, 1987

TO: Lee Cargile, PHD
Counselor

THRU: Ted Eastwood, Principal

FROM: Superintendent for Education

SUBJECT: Counseling Services for Sexually Abused Students

Effective today, December 14, 1987, you are directed to discontinue counseling services to those students who have been identified as sexually abused re: the John Boone incident.

This action has been taken per direction from the Assistant Director, South and West Agencies, Gallup, New Mexico.

Mr. Eastwood and you should meet as soon as possible to form a schedule of academic counseling at the Polacca Day School. Further, a new schedule of itenerant visitation to PDS will be formulated between you and the PDS Principal.

If you have any questions, you can contact me at 738-2262.

Albert T. Sinquah

CC. Dr. Ken Ross
Assistant Director
South & West Agencies

DEC 1987
RECEIVED

A.S. 5j

December 18, 1987

TO: Superintendent for Education

FROM: Lee Cargile

SUBJECT: Termination of guidance services at Polacca Day School

It has come to my attention that someone has complained that my counseling efforts at Polacca Day School have been more detrimental than beneficial; that I have written letters requesting money for researching the Boone incident and that I am gathering data through a questionnaire sent through the mail. I have also heard that I am jeopardizing the position of the United States Department of Justice concerning the law suits that have been filed by the parents of some of the boys that were involved with Boone.

In-as-much as my competency as a counselor is in question and the obvious threat to my livelihood is at stake, I respectfully request that any and all of the evidence of my wrongdoing be submitted to me.

Since I know that none of this evidence exists, I submit that I have been wrongly and harshly treated and unless something is done about it, I shall suffer irreparable harm in terms of employment.

For the record, I should like to state that I have never done anything that was not in the best interest of the Polacca Day School students and the Hopi people.

Thank you for any consideration you may extend to me.

Lee Cargile

Lee Cargile
Guidance Counselor

RECEIVED

FEB 22 10 21 AM '88

OFFICE OF INDIAN EDUC.
SOUTH & WEST AGENCIES
GALLUP, NEW MEXICO

February 17, 1988

TO: Dr. Ken Ross, Assistant Director, South & West Agencies

FROM: Lee Cargile, Guidance Counselor

SUBJECT: Request for a response concerning an action taken against me December 14, 1987

I have enclosed a letter that I wrote to the Superintendent for Education December 18, 1987. I understood that this letter would be brought to your attention. As of this date I have not received any response.

I am currently seeking employment in other areas and am concerned that this "action" will adversely affect my chances of employment. Since there is no hard evidence that I am guilty of any wrongdoing, would it be possible for you to write me a letter explaining the purpose of the action? Time is of the essence and a reply within two weeks would be appreciated.

Thank you for any consideration you may extend to me.

Lee Cargile

Lee Cargile, Counselor
Keams Canyon Boarding School
P.O. Box 397
Keams Canyon, AZ 86034

UNITED STATES GOVERNMENT
# memorandum

DATE: December 30, 1987

REPLY TO ATTN OF: Superintendent for Education, Hopi Agency

SUBJECT: Request for Information

TO: Assistant Director, S & W Agencies, OIEP

The attached request has been received at my office.

The specific information requested is not available at the Agency Office of Indian Education Programs.

Per directions to reassign the employee to another school from your office, it is requested that a response be directed to Mr. Cargile.

Attachment

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

★ U.S. GOVERNMENT PRINTING OFFICE : 1982 O - 381-526 (8153)

MAR 1 6 1988

Assistant Director, South & West Agencies, Education Programs

Request for Evidence of Wrong Doing

Mr. Lee Cargile, Guidance Counselor
THROUGH: Principal, Polacca Day School
Agency Superintendent for Education, Hopi Agency

In your December 18, 1987 letter to the Hopi Agency, Superintendent for Education, you requested any and all of the evidence to support the following statements:

> That you have written letters requesting money for researching the Boone incident.
>
> That you were gathering data through a questionnaire sent through the mail.
>
> That you were jeopardizing the position of the United States Department of Justice concerning lawsuits that have been filed by the parents of some of the boys that were involved with Mr. John Boone.

I am submitting for the record, correspondence from the Acting Area Director, Phoenix Area which reflects the chronology of circumstances leading to a meeting on December 10, 1987 involving the Acting Area Director, Phoenix Area, the U. S. Attorney's Office, the U. S. Justice Department and the Phoenix Area Criminal Investigator on the issue you have raised.

The decision arrived at this meeting was to eliminate any potential conflict which would appear to impede the efforts of the U. S. Justice Department's activities to provide rehabilitative services to the abused children and their families. Thus, the directive was issued by this office to curtail your counseling services to those children who had been identified as victims of child abuse.

The decision to reassign you from the Polacca Day School to providing counseling services for Keams Canyon Boarding School and the Hopi Day School was made by the Acting Agency Superintendent for Education, Hopi Agency.

This administrative action was not taken as an affront to your counseling competencies. In addition, the record shows that your employment was protected, in as much as, you were reassigned to provide counseling services needed at the Hopi Day School and Keams Canyon Boarding School. This reassignment was conducted in the best interest of the federal government as a result of an intra-federal agency meeting wherein the administrative action taken was agreed by consensus.

Dr. Kenneth G. Ross

cc: Chairman Ivan Sidney, Hopi Tribe
Personnel, Phoenix Area
Pat Hayes, Assistant Area Director, Phoenix

File
Chrono

UNITED STATES GOVERNMENT
# memorandum

RECEIVED
MAR 8 10 01 AM '88
OFFICE OF INDIAN EDUC.
SOUTH & WEST AGENCIES
GALLUP, NEW MEXICO

DATE: FEB 23 1988

REPLY TO ATTN OF: ACTING Phoenix Area Director

SUBJECT: Meeting During December 1987

TO: Assistant Director, OIEP, South & East Agencies, Gallup, NM

This letter confirms the substance of a telephone conversation we had last week. That conversation centered around a meeting we participated in during December, 1987.

The referenced meeting arose as a result of a telephone call I received from Dan Jackson, Attorney, Phoenix Field Solicitor's Office on or about December 8, 1987. Mr. Jackson expressed to me the concerns as conveyed by Roger Dokken, Assistant United States Attorney and Ms. Jan Emerick, Victim Witness Coordinator, U. S. Department of Justice. Their concerns centered around their efforts to introduce a victim counselling program to the victims and the families who were involved in the molestation/abuse by the teacher at a school on the Hopi Reservation. In this regard, information had surfaced to the effect that a Lee Cargile was, in some manner, interferring in the efforts of the Justice Department counsellors. Concern was further expressed that Mr. Cargile may have been gathering data and information with a view toward some future publication effort.

Thus, in reference to the above, a meeting was held on December 10, 1987, at 3:30 p.m., in my office to resolve the situation. In addition to yourself and myself, those in attendance were Dan Jackson, Roger Dokken and Ted Quasula, Phoenix Area Special Officer. At the meeting we discussed generally the situation described above and held two telephone conversations with the Hopi Agency Education Business/Personnel Officer. The decision reached during the meeting was, essentially, that Lee Cargile would be directed to not interfere or in any way attempt to become involved with either the clients, families or counsellors associated with this particular Justice Department Victim Assistance effort. He was to perform his regular counselling duties at the school which were not associated with the other counselling effort.

I trust this has adequately summarized the reasons, content and results of the subject meeting. If you need anything further, please advise.

Patrick A. Hayes

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114

GPO : 1984 O - 446-111

EXIBIT K

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Navajo Area Office
P. O. Box 1060
Gallup, New Mexico 87305

TAKE PRIDE IN AMERICA

IN REPLY REFER TO:

Mr. Albert Sinquah
Education Specialist, GM-1710-13
Office of Indian Education Programs
P. O. Box 1060
Gallup, New Mexico 87305

Dear Mr. Sinquah:

This is to inform you that you are Officially Reprimanded for the following reason:

1. Failure To Follow-up On A Complaint From The Victim Witness Coordinator, U.S. Department of Justice:

   Specifically: On December 2, 1987 you were contacted via telephone from Ms. Jan Emmeriah, Victim Witness Coordinator who advised you that Mr. Lee Cargile had contacted someone in that office requesting funds to travel to New York City to interview Mr. John Boone about video tapes of child sex abuse activity, and the proposed or actual distribution of a highly questionable survey or questionnaire which was to be used in obtaining highly sensitive information from victim and/or their families.

   You failed to document any attempt to contact Mr. Ted Eastwood, Mr. Cargile's supervisor, or directly intervene to counsel or propose adverse action against Mr. Cargile for his highly improper and irregular behavior or circumventing his supervisors as well as failing to obtain proper permission for his actions.

   Further, you failed to seek written confirmation from Ms. Jan Emmeriah of her verbal message to you to establish a documented record upon which adverse action could be initiated.

I have considered the Douglas Factors in arriving at my decision to officially notify you of this Letter of Reprimand and to officially document the lax administrative actions regarding documentating highly questionable actions of your subordinates. This situation reveals that untimely or non-action can have serious ramifications, especially when very sensitive issues are involved.

You have the right to reply to this letter of reprimand in writing to me within 10 days. You may state in your reply why you believe that this reprimand is not justified. Your reply, if any, will be filed in your Official Personnel Folder along with this letter.

This letter of reprimand will be placed in your Official Personnel Folder for a period not to exceed two (2) years.

You may appeal this action through the Bureau's grievance procedure. The appeal must be filed with the Navajo Area Personnel Office, Attention: Labor Management and Employee Relations Section, within 15 days of the receipt of the reprimand.

If you choose to grieve, it must be in writing, give information regarding your identity and the office in which employed; and give your reasons for contesting the action with any offer of proof or pertinent documents you are able to submit.

The documentation relied upon to support this reprimand is available for your review in my office.

Please acknowledge receipt of this letter in the space provided on the enclosed copy and return the signed copy to me. Your signature does not mean that you agree with this letter, but merely shows that you received it.

Sincerely,

Dr. Kenneth G. Ross

Assistant Director,
S&W Agencies, Education Operations

Enclosure

EXIBIT L

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Navajo Area Office
P. O. Box 1060
Gallup, New Mexico 87305

IN REPLY REFER TO:

Mr. David Talayumptewa
Business Manager, CE-1710-05
BIA-Hopi Agency
P. O. Box 568
Keams Canyon, Arizona 86034

Dear Mr. Talayumptewa:

In accordance with provision of 62 BIAM 11.8, I have decided to issue you a Letter of Reprimand. The reason for this reprimand is as follows:

While serving as Acting Agency Superintendent for Education, Hopi Agency the week of December 10, 1987, you were verbally directed to conduct an administrative review of the verbal charges from persons in the U.S. Department of Justice that Mr. Lee Cargile had contacted that office requesting funds to travel to New York City to interview John Boone. That Mr. Cargile proposed or had distributed a highly sensitive questionnaire to victims and their families and was interferring with the U.S. Department of Justice, victims of crimes counseling efforts at the Polacca Day School.

While you did conduct this investigation as directed, there is no evidence that you reported your findings to your supervisor upon his return to duty. This failure ultimately led to no corrective action being taken to counsel Mr. Cargile about the highly improper actions he took nor was any adverse action such as a Warning issued.

These actions are in my mind, clearly indicative of Careless Performance, especially in light of the highly sensitive efforts the Bureau and the U.S. Department of Justice are faced with relative to providing Child Abuse Rehabilitation Efforts at the Polacca Day School.

Your inattention to duties by failing to document your investigation findings on Mr. Lee Cargile did not provide your supervisor any written material upon which he could have taken action to address this situation.

Based on the above stated reasons, you are hereby issued a Letter of Reprimand for Careless Performance. As provided in 62 BIAM 11.8, this letter will be retained in your Official Personnel Folder for a period not to exceed two years. Should you commit another offense of this nature during this time, a more severe penalty may be imposed.

If you question the merits of this action, you may seek relief as provided in the O.I.E.P. Grievance Procedure. If you choose to file a grievance, you must do so within 10 calendar days from the receipt of this letter. Your grievance must be submitted to me. If you desire further explanation of these procedures, you may contact Ms. Pam Bertal, Employee and Labor Relations Specialist, Phoenix Area Office, Branch of Personnel, P. O. Box 10, Phoenix, Arizona 85001 or telephone number 602/441-2326.

You are requested to acknowledge receipt of this letter in the space provided on the enclosed copy and return it to the undersigned. Your signature merely shows you have received the letter and does not signify that you agree with its contents.

Sincerely,

Dr. Kenneth [illegible] Ross

Assistant Director,
S&W Agencies, Education Operations

Enclosure

EXIBIT M

JAN 21 1988

Education 511

Mr. Albert Sinquah
Hopi Agency Superintendent
for Education
Office of the Assistant Director
South & West Agencies
Federal Bldg., Third & Hill, PO Box 1060
Gallup, New Mexico 87301

Dear Mr. Sinquah:

This is your official notice that you are reassigned to the position of Education Specialist, A10.1072A, GS-1710-13, Gallup, New Mexico. The needs of the Bureau and the effective operation of its programs make this action necessary in accordance with the regulations in 44 BIAM 335, Promotion and Internal Placement. This reassignment will be effective March 6, 1988. You will retain your same grade and your rate of pay will be GS-13/5.

WRITTEN RESPONSE

Within 14 days after the date on which you receive this letter, you must respond in writing indicating whether you will or will not accept this offer of reassignment. A failure on your part to respond will be considered as a negative reply. Your response should be sent directly to the undersigned at the address on this letterhead.

FAILURE TO ACCEPT

You are advised that if you do not accept this reassignment, or if you fail to reply, it will be necessary to initiate a formal personnel action to remove you from your position. If you choose to not accept this reassignment, you may indicate localities in which you would be willing to work so that efforts may be made to help you find other employment. If you are ultimately separated involuntarily, you may not make application for discontinued service retirement because you do not meet the age and service requirements listed in FPM 831.

Please sign and return the receipt copy of this letter which is enclosed. Your signature indicates only that you have received this notice, not that you necessarily agree with its contents. This receipt does not meet the requirements for a response within 14 days which is described above in this letter.

Sincerely,

Deputy to the Assistant Secretary/
Director - Indian Affairs
(Indian Education Programs)

EXIBIT N

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P.O. Box 158
Keams Canyon, Arizona 86034

IN REPLY REFER TO:

DATE: 2/27/89

Automatic Telefax for OIEP, Hopi Agency is located at:

BIA-Office of Indian Education Programs
P.O. Box 568
Hopi Agency
Keams Canyon, Arizona 86034

Automatic Telefax No. (602) 738-5139
Information or assistance No: (602) 738-2262 or (602) 738-2263

NO. OF DOCUMENTS TRANSMITTED (Including Cover Sheet

TO THE ATTENTION OF: Merle Zunigha

OFFICE: Personnel / Phoenix Area

TELEPHONE NO.: 602-2

FROM: John D. Wahnee, ASE

OFFICE: Hopi / OIEP

TELEPHONE NO.: 602-738-2262

MAIL CODE:

Remarks or Special Instructions: Request for Personnel Audit

DISPATCHED BY: L Gonzales TIME: 8:30 a.m.

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P.O. Box 568
Keams Canyon, Arizona 86034

IN REPLY REFER TO:

February 24, 1989

TO: Mr. Merle Zunigha,
Personnel Officer, Phoenix Area

FROM: Superintendent for Education
Hopi Agency/OIEP

SUBJECT: Request for a Personnel Audit on the Issuance of a P.L. 95-561 Education contract for Mr. Lee Lane Cargile, Counselor, Polacca Day School - August 16, 1988 to June 2, 1989.

Please be advised that the Polacca Day School Board of Education made a determination not to renew Mr. Cargile's Education Contract on March 18, 1988. (Attachment A)

The determination of the Polacca Day School Board of Education was not appealed by Mr. Teddy R. Eastwood to the Agency Superintendent for Education, Hopi Agency. Therfore, the Board determination was upheld by administration to non-renew the contract.

This action was taken prior to the P.L. 100-297 being submitted to the general public. P.L. 100-297 was issued April 28, 1988. (Attachment B) Non-renewal of a contract by a Board of Education prior to P.L. 100-297 did not require that cause be provided. (Verify by calling Mr. Joe Jarrett, Area Personnel Officer, Gallup Area Office, BIA).

Mr. Cargile was given written notice that his education contract for the 1988-89 school year would not be renewed - due to programmatic changes. Authority - 25 CFR Part 38.6 - (e).

The Hopi Eduation Agency Office had prepared an SF-52 for "Non-Contract Renewal" under the authority of 25 CFR Part 38.6 - (e) Contract Renewals.

However, Mr. David Talayumptewa, Business Manager was informed by Mr. Ray Meadows and after his departure Ms. Eileen Johnson that unless cause was provided or unless a Reduction-in-force was approved, he was obligated to renew Mr. Cargile's Contract.

After reviewing the situation carefully I feel that the intent of P.L. 95-561, which under statute authorizes School Boards to make a determination of renewal or non-renewal on contracts, was completely ignored by Personnel.

If administration disagrees with the determination it may appeal said determination to the Agency Superintendent for Education. This was not done in this case. Therefore, the Board's determination should have been upheld and Mr. Cargile's 1988-89 school year contract should not have been awarded.

I feel that due to Administrative error; Mr. Cargile's contract for school year 1988-89 as Counselor should be cancelled immediately.

Please advise my office as soon as possible of your decision related to this matter.

John D. Wahnee

John D. Wahnee

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
HOPI AGENCY
P. O. Box 158
Keams Canyon, Arizona 86034

IN REPLY REFER TO:

March 31, 1988

TO: Lee Cargile, Counselor

FROM: Principal, Polacca Day School

SUBJECT: Non-renewal of contract for 1988-89 school year.

In a duly called school board meeting on March 18, 1988, the Polacca Day School Board made a determination that programmatic changes are necessary at the Polacca Day School which will require additional instructional staff. This means that the money previously used to pay your salary, now must be rechanneled to pay salaries for instructional staff. Unfortunately, this programmatic change dictates that you will not be offered a contract for the next school year (1988-89).

Please be advised that this in no way reflects negatively on your performance as a Counselor for the Polacca Day School.

If you have any questions please feel free to contact me at 737-2581.

Teddy R. Eastwood
Teddy R. Eastwood

(attachment B.)

"(3) Each State educational agency may waive, for 1 fiscal year only, the requirements of this subsection if the State educational agency determines that such a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the local educational agency.

"(b) FEDERAL FUNDS TO SUPPLEMENT, NOT SUPPLANT REGULAR NON-FEDERAL FUNDS.—A State educational agency or other State agency in operating its State level programs or a local educational agency may use funds received under this chapter only so as to supplement and, to the extent practicable, increase the level of funds that would, in the absence of such Federal funds, be made available from non-Federal sources for the education of pupils participating in programs and projects assisted under this chapter and in no case may such funds be so used as to supplant such funds from such non-Federal sources. In order to demonstrate compliance with this subsection, no State educational agency, other State agency, or local educational agency shall be required to provide services under this chapter through use of a particular instructional method or in a particular instructional setting.

"(c) COMPARABILITY OF SERVICES.—

"(1) A local educational agency may receive funds under this chapter only if State and local funds will be used in the district of such agency to provide services in project areas which, taken as a whole, are at least comparable to services being provided in areas in such district which are not receiving funds under this chapter. Where all school attendance areas in the district of the agency are designated as project areas, the agency may receive such funds only if State and local funds are used to provide services which, taken as a whole, are substantially comparable in each project area.

"(2)(A) A local educational agency shall be considered to have met the requirements of paragraph (1) if it has filed with the State educational agency a written assurance that it has established and implemented—

"(i) a districtwide salary schedule;

"(ii) a policy to ensure equivalence among schools in teachers, administrators, and auxiliary personnel; and

"(iii) a policy to ensure equivalence among schools in the provision of curriculum materials and instructional supplies.

"(B) Unpredictable changes in student enrollment or personnel assignments which occur after the beginning of a school year shall not be included as a factor in determining comparability of services.

"(3) Each educational agency shall develop procedures for compliance with the provisions of this subsection, and shall annually maintain records documenting compliance. Each State educational agency shall monitor the compliance of local educational agencies within the States with respect to the requirements of this subsection. Records.

"(4) Each local educational agency with not more than 1 building for each grade span shall not be subject to the provisions of this subsection.

"(5) Each local educational agency which is found to be out of compliance with this subsection shall be subject to withholding

code of federal regulations

[illegible]

Indians

(attachment C-)

25

Revised as of April 1, 1987

Regulations Prior To P.L. 100-297 enactment

(i) It is warranted by the geographic isolation of the work site or other unusually difficult environmental working or living conditions, and

(ii) It is necessary as a recruitment or retention incentive. This staff differential is to be computed on the basic schedule rate before any other additions are computed.

(iii) Justification must be provided as indicated in paragraph (b)(3) of this section.

(3) Special rates may be established for recruitment and retention applicable only to a specific position or to specific types of positions in specific locations based on a formally documented request by an Agency Superintendent for Education and submitted to the Director for recommendation to the Office of Personnel Management. The request from the Agency Superintendent for Education must show numbers of losses of personnel, and/or unusually difficult working and/or living conditions, which are specifically related to differences in total compensation, including benefits, offered by the Bureau and the education organizations with which the Bureau is competing for local recruitment and retention.

§ 38.6 Appointment of educators.

(a) *Local school employees.* Local Bureau school employees shall be appointed only by the school supervisor. Before the local school employee is employed the school board shall be consulted. An individual's appointment may be finalized only upon receipt of a formal, written approval certified by the local school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approval of the proposed appointment. The local school board should use the same procedure to disapprove an appointment. Within ten (10) calendar days of receipt, the school supervisor may appeal any determination by the local school board concerning an individual's appointment to the Agency Superintendent for Education or for off-reservation boarding schools only to the Area Education Program Administrator. Within ten (10) calendar days following receipt of an appeal, the Agency Superintendent for Education or Area Education Program Administrator as appropriate may reverse the determination for good cause set out in writing to the school board. Failure to act within such ten (10) calendar day periods shall have the effect of approval of the local school board's determination.

(b) *School supervisors.* School supervisors may be appointed only by the Agency Superintendent for Education. The Area Education Program Administrator will appoint school supervisors for off-reservation boarding schools only. Before the school supervisor is employed, the school board shall be consulted. The appointment may be finalized only upon receipt of a formal, written approval certified by the school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approval of the proposed appointment. The school board should use the same procedure to disapprove an appointment. Within twenty (20) calendar days of receipt, the Agency Superintendent for Education, or Area Education Program Administrator, as appropriate, may appeal to the Director any determination by the school board concerning an individual's appointment. Within twenty (20) calendar days following receipt of an appeal, the Director may reverse the determination for good cause set out in writing to the school board. Failure to act within such twenty (20) calendar day period shall have the effect of approval of the school board's determination.

(c) *Agency office education program employees.* Appointments to Agency office education positions may be made only by the Agency Superintendent for Education. Before the agency education employee is employed, the Agency school board shall be consulted. The appointment may be finalized only upon receipt of a formal, written approval certified by the Agency school board under such uniform procedures as it may adopt. Written determination by the school board should be received within a reasonable period, not to exceed 30 days. Failure of the school board to act within this period shall have the effect of approval of the proposed appointment. The Agency school board should use the same procedure to disapprove an appointment. Within twenty (20) calendar days of receipt, the Agency Superintendent for Education may appeal to the Director any determination by the school board concerning an individual's appointment. Within twenty (20) calendar days following receipt of an appeal, the Director may reverse the determination for good cause set out in writing to the school board. Failure to act within such twenty (20) calendar day periods shall have the effect of approval of the school board's determination.

(d) *Employment Contracts.* The Bureau shall issue employment contracts each year for employment in contract education positions at the Agency and schools levels.

(e) *Contract Renewals.* The appropriate school board shall be notified by the school supervisor and/or Agency Superintendent for Education not less than ninety (90) days before the expiration of an individual's contract whether that contract is or is not recommended for renewal. If the school board disagrees with the school supervisor's or Agency Superintendent for Education's recommendations, the board should submit a formal, written certification of its determinations to the school supervisor or Agency Superintendent for Education within twenty-five (25) days. If the board's determinations are not received within the twenty-five (25) days, the school supervisor or Agency Superintendent for Education shall issue the required sixty (60) days notification of renewal or non-renewal to the individuals under § 38.10(c). Where the school board submits its recommendation within the twenty-five (25) days, the school supervisor or Agency Superintendent for Education shall implement the board's determination through issuance of the required sixty day notice of renewal or nonrenewal as appropriate.

(f) *Absence of local school boards.* In the event that a local school board has not been established in accordance with section 1139(7) Pub. L. 95-561 with respect to a Bureau school, or is effectively defunct, then in situations where the local school board is required to be given a notice or required to be consulted, by statute or these regulations, the official involved shall notify or consult with the Agency school board serving the tribe to which the parents of the Indian children attending that school belong, or in its absence, the tribal organization of the tribe involved.

(g) *Conditional appointment.* As provided in section 1131(d)(4), Pub. L. 95-561, if an individual who has applied at both the national and local levels is appointed from a local list of applicants, the appointment shall be conditional for ninety (90) days. During that period, the individual's application and background shall be examined to detemine if there is a more qualified individual for the position. Removal during this period is not subject to discharge, hearing or grievance procedures.

(h) *Short term contracts.* (1) There may be circumstances where immediate action is necessary and it is impossible to consult with the local school board. When this situation exists short term contracts may be made by the school supervisor in accordance with the following:

(i) The length of the contract will not exceed sixty (60) days, or the next regularly scheduled school board meeting, whichever comes first.

(ii) If the board meets and does not take action on the individual in question, the short term contract may be extended for the duration of the school year.

(iii) It shall be the responsibility of the school supervisor to fully inform the local school board of all such short term contracts. Failure to do so may be cited as reason to discharge the school supervisor if so requested by the board.

(2) The local school board may authorize the school supervisor to make an emergency short term contract to

EXIBIT O

[redacted]

UNITED STATES GOVERNMENT

memorandum

DATE February 16, 1989

REPLY TO ATTN OF: Investigative Team

SUBJECT: Investigative Findings and Conclusions Re: Mr. Lee Cargile, Residential Supervisor at Keams Canyon School

TO: Assistant Director, South & West Agencies

The following are the investigative findings conducted on the Hopi Reservation on February 14 and 15, 1989. Interviews were held with various Hopi Agency O.I.E.P. Staff, Hopi Tribal Director of Health, Keams Canyon School Personnel and with the UNM Consulting Psychiatrists.

The Purpose of this investigation stems from the many concerns that were expressed by various employees which include both inside and outside service providers to the Hopi Area. The investigation was conducted unannounced on Tuesday, February 14, 1989, with notification of our presence made to the Hopi Agency O.I.E.P. Superintendent on the following day, February 15, 1989.

The focus of the investigation centered on the following areas of concern:

1) Rationale for placement of Mr. Cargile in his current supervisory position at Keams Canyon School.

2) Inappropriate discussions by Mr. Cargile with sexually abused victims at Polacca Day School.

3) The distribution of an inappropriate questionaire by Mr. Cargile concerning the Polacca Sexual Abuse incident.

4) Mr. Cargile's interest in developing/writing a book on the Polacca sexual abuse incident for his own personnal gain.

5) Mr. Cargile's professional ethics, abilities and intent as a counselor.

6) Allegations about Mr. Cargile's use of alcohol.

7) Allegations about Mr. Eastwood's, former Principal at Polacca Day School, alcohol related problems.

8) Current dormitory program and operation at Keams Canyon School under Mr. Cargile.

9) Crisis waiting to happen at Keams Canyon Dormitory?

OPTIONAL FORM NO 10
REV 1-80
GSA FPMR 41 CFR 101-11.6
5010-114

GPO : 1984 O - 433-783

Each area of concern has been reported upon. Included are conclusions that we have drawn from our interviews, experience and education.

1) Rationale for Placement of Mr. Cargile in his current supervisory position at Keams Canyon School.

Mr. Cargile initially was hired at the Hopi High School and was released from his contract for non-performance at the request of the local school board. He was subsequently hired at the Polacca Day School when he was the only applicant for the counselor's position. Allegations then surfaced about Mr. Cargile's work performance in the aftermath of the Boone incident. The local school board decided that a contract would not be offered to Mr. Cargile. Personnel documents indicate that all regulations related to non-renewal of a contract were met. However, when the proposed action with the appropriate documents were relayed to the Phoenix Area Office, the Hopi Agency O.I.E.P. Personnel were informed that this constituted an adverse action and that Mr. Cargile's contract had to be renewed.

Finally, Hopi Agency O.I.E.P. personnel, the local Polacca School administration and school board relented and a contract was offered to Mr. Cargile at the Polacca Day School as a counselor. It was then decided that it would be in the best interest of all concerned that Mr. Cargile be administratively moved to Keams Canyon School. Currently, he is the dormitory supervisor at Keams Canyon School. The school is without a Principal and Mr. Cargile has alternately been acting principal.

In retrospect, there may have been a misinterpretation of PL 95-561 regulations as related to contract non-renewal by the Phoenix Area Office. The current Hopi Agency O.I.E.P. Superintendent has made contact with the Phoenix Area Director in hopes of rectifying the misinterpretation. Assistance may also be required from the Central Office O.I.E.P. staff.

Conclusions:

There is no rationale for placement of Mr. Cargile in his current position. He was placed at Keams Canyon School because of administrative "interpretation/misinterpretation of certain regulations and basically trying to find a place for Mr. Cargile since no one really wanted him. Given the current past circumstances surrounding Mr. Cargile, it was administratively decided that he could provide the most help at Keams Canyon School. This, at the time, seemed the only course of action to take. The school boards at Keams Canyon School and Polacca Day School have recently indicated that they are not in favor of renewing Mr. Cargile's contract. Immediate action will need to be taken in either non-performance of duties and if any other reportable incidences surface, these will need to be documented for non-renewal purposes. Mr. Cargile's position is currently being funded by Keams Canyon School, even though his contract is with the

Polocca Day School.

2) Inappropriate discussions by Mr. Cargile with sexually abused victims at Polacca Day School.

Concerns were made from a clinical standpoint from the Consulting Psychiatrists with regard to the large amount of data and the elaborate, systematic filing system which Mr. Cargile had developed on each child whom he interviewed.

Mr. Cargile admitted that he did have a mental list of questions which he asked of all students pertaining to the sexual abuse incident. He claims that he did not single out any particular student group however that he questioned all boys and girls in the same manner. He freely admitted that this was not the best counseling technique, but said that this method worked for him.

Mr. Cargile felt that there was a need to initiate some form of program to assist the victims and this was the initial step until he was told to cease.

Conclusions:

Techniques used by Mr. Cargile at this time were inappropriate. This technique subjected all students to embarrassment and stress whether or not they were the victims.

3) The distribution of an inappropriate questionaire by Mr. Cargile concerning the Polacca Sexual Abuse indident.

Noone we interviewed could provide any substiantiated proof that a questionaire supposedly developed and distributed by Mr. Cargile ever existed.

Conclusion:

We agree with Mr. Cargile that this allegation may have stemmed from the fact that he had a mental list of questions. He did not freely divulage what questions were asked but gave us general questions.

4) Mr. Cargile's interest in developing/writing a book on the Polacca sexual abuse incident for his own personal gain.

Noone whom we interviewed had any substantiated proof that Mr. Cargile had intended to write a book on the sexual abuse incident.

Mr. Cargile admits that he had an interest in using the data for research purposes. He admitted the fact that he had asked permission to interview Mr. Boone in prison since he felt that he had developed good rapport with Mr. Boone. He felt that Mr. Boone would divulge to him the whereabouts of the video tapes.

Conclusion:

Mr. Cargile flatly denies any intention of writing a book however, he did express the fact that he did want to use the data for research purposes. We find his intentions questionable.

5) Mr. Cargile's professional ethics, abilities and intent as a counselor.

The determination of one's professional ethics, abilities and intent as a counselor can only be determined by the individuals work habits and actions while performing the duties of a counselor. We find that Mr. Cargile's ethics, abilities and intent as being highly questionable. Much of our concerns stem from his actions during the aftermath of the Boone incident at Polacca Day School and his current responsibilities at Keams Canyon School.

The Boone incident at Polacca with its initial tragic impact and long term devestation on the students, staff and community is evident to any lay person. It should have been perceived by a professionally trained counselor with keen insight, sensivitity and emphathy. We find that Mr. Cargile's actions in dealing with the situation to be totally off the track. The use of individual interviewing techniques of the students could have very well created more problems for the abused victims and possibly damaged those who were not abused. He freely admits that this may not have been the best technique to use but it worked for him. The intent may have been to find out which students were abused and to get them the needed help as quickly as possible. However, what guarantees did Mr. Cargile have that the students would be willing to divulge such sensitive information to him? We are concerned that he did not take the time to develop a comprehensive assistance program for the identified students and their families. When such planning and groundwork is not laid prior to identification, the results can be devastating.

Mr. Cargile's willingness to interview Mr. Boone about the whereabouts of the supposedly nonrecovered video tapes is questionable. The community was devastated by the incident. The recovery of the tapes was a moot issue in that Mr. Boone had already been incarcerated for his abuses. Mr. Cargile should have realized that such should have been left to the law enforcement officials.

In the area of his interest in doing research, we also feel that this is also questionable. Again, given the devestating impact of the Boone incident, the awareness by the community that the incident would be documented and utilized in a study would create only more turmoil and mistrust in an already fragile environment.

We question Mr. Cargile's use of alcohol during his off-duty time on school days knowing that he may be subject to an emergency call-back to the dorm to deal with staff, students and/or parents. In an environment already beset with alcohol related problems, we find this to be highly insensitive and unprofessional. He should have understood that the level of alcohol use is not determined by how much one drinks but by whether one drinks or abstains. It is also illegal on the Hopi Reservation.

Conclusions:

Any service provider in the behavioral science field should know through training and common sense, that when the problems are beyond their abilities and skill levels, one will ask for help before proceeding in fear that more damage can be done. Mr. Cargile, we feel went beyond his limits. He should have realized that the Boone incident was beyond his capabilities. We are puzzled as to why he felt that he was qualified to handle such a massive problem with so limited experience and background in this particular area.

If he is unable to realize his limitations, he is an extreme danger to the staff and students whom he services.

6) Allegations about Mr. Cargile's use of Alcohol.

Two individuals claimed that on one occasion late at night, they met Mr. Cargile in the dorm in a disheveled appearance. One of the individuals claim that he detected alcohol on the breath of Mr. Cargile. In questioning Mr. Cargile about such an incident but not referring to where we received our information, he related an incident of similar nature which happened at another time and with someone else. Mr. Cargile supposedly had returned from a personnal out of town trip and had reported to work that morning. As he entered the office area, an employee commented that she detected the odor of alcohol on him. Mr. Cargile related to the employee that he had returned from a trip and had a few drinks approximately 13 hours prior. He was surprised that the odor could still be detected. Mr. Cargile admits that he occasionally will have a glass of wine during his off duty hours.

We also interviewed other staff persons who claimed that they have never detected any odor of alcohol or any signs of intoxication at any time with Mr. Cargile.

Conclusion:

We asked Mr. Cargile if he is having any problems with alcohol use. He flatly denies that he is having any problems. We feel that at times Mr. Cargile will use alcohol during his off duty hours. However, given his inexperience in dorm operations and not realizing initially that he could be called back at any given time Mr. Cargile may have very well had to return to the dormitory after consuming alcohol at home during his off duty hours. Again, Mr. Cargile must understand his responsibilities and his limited freedoms when he is responsible for a residential operation. He also needs to be sensitive to the current alcohol related problems on the reservation and how his actions can directly impact upon the environment. Mr. Cargile needs to be aware that the possession, transportation and the use of alcohol on the Hopi Reservation is illegal.

7) Allegations about Mr. Eastwood's, former principal at Polacca Day School, alcohol related problems.

Two consultant Psychiatrists claim that they both confronted Mr. Easwood on several occasions about his alcohol problem. They did state that reports were prepared and submitted on this problem to either the school board or to the task team. They were not certain however, they would review their notes to find these copies. They would then submit a copy to Dr. Ross.

The counselor stated that Mr. Eastwood did not have a problem with alcohol. He stated that he never smelled alcohol on Mr. Eastwood's breath and that he never saw him drinking. He stated that he did not think that Mr. Eastwood had a problem with alcohol. However, he mentioned that Mr. Eastwood had a health problem and was taking a medical perscription.

Noone else interviewed had an opinion on this subject.

Conclusion:

Statements and reports written and submitted by the two Psychiatrists lead us to believe that Mr. Eastwood may have had a problem with alcohol based upon their clinical standpoint.

8) Current dormitory program and operation at Keams Canyon School under Mr. Cargile's supervision:

The current program and operation at Keams Canyon School is a day to day operation that lacks long range direction for various reasons. The present enrollment includes 11 boys and 18 girls. The staff consists of 4 homeliving assistants and Mr. Cargile as the residential supervisor. The program operates Monday through Friday. All students are required to go home on Friday afternoon with them returning on Monday. The staff to student ratio is within compliance standards. The physical make-up of the facility include a downstairs section for the boys and an upstairs section for the girls. The basic physical needs of the students are well met. Students live in an attractive, well maintained setting. Their clothing is well taken care of, student accountability is well-maintained with the required roll calls being made. Leisure time activities include television viewing, pool table and foosball table games and school related sporting activities. A simple, but effective behavioral control program has been implemented. The program provides for both positive and negative concequences when established rules are broken or complied with. A well displayed honor board listed the names of the students who were doing well in the dorm. The staff felt that the program was working. The program was introduced at a staff training session provided by persons from Northern Arizona University.

Mr. Cargile's actual role and effectiveness in the overall program is questionable. The staff indicates that when referrals are made to him on students, the response is not made in a timely fashion. His schedule indicates that he is to work two evenings per week, however, the staff has indicated that this seldom happens. They indicated that he is usually there when the students are in school and off-duty when the students return to the dorm. We could not find any evidence of regularly scheduled individual nor group counseling activities occuring through Mr. Cargile's efforts. The staff claims that Mr. Cargile is very forgetful and often fails to follow through with most of their requests. Only two staff meetings have been called. the staff meetings were iniciated only after the homeliving staff requested that a meeting was needed.

Conclusions:

The general consesus indicates that Mr. Cargile's presence has no impact on the residential program one way or another. The man is very inexperienced in the area of residential programs. He seemingly is trying to learn as he progresses in his job. The lack of a permanent principal at Keams Canyon School has also in several ways affected Mr. Cargile's progress where he is at times placed in the acting principal's position.

Given Mr. Cargile's educational background, it is felt that individual and group counseling sessions in various student need areas should have been developed and implemented. The student population in the residential program is very low and makes it more conducive to such programs.

Mr. Cargile's inexperience in residential programs should not have hampered nor deterred him from doing such, since this would be more of a counselor's role. It is felt that he is not innovative in his approaches in working with students and staff. His personality profile does not indicate that even allowed the time and training that his work will have a heightened positive impact on the residential program. Again, his educational credentials belie his actual performance.

Summary:

Our investigative findings support the concerns voiced by certain individuals about Mr. Cargile. Due to various administrative changes and mix-ups at the Hopi Agency O.I.E.P. Office and the Phoenix Area Office, the problem continues to exist. Administrative actions will need to be taken to rectify the situation.

There are definite indicators which support Mr. Cargile's incompetence in working with Native American children in the counseling field. He has also proved to be an ineffective residential program supervisor.

With certain administrative remedies and the selection of another skilled/qualified residential supervisor, the potential is there to develop a superior residential program for all enrolled students at the Keams Canyon School. The current homeliving staff is ready and willing, but need someone to direct them. They are very anxious to see the program succeed and willing to help in any way possible.

Martha L. Tsiosdia
Martha L. Tsiosdia
Homeliving Specialist

Tom Nagahiro by of
Tom Nagahiro
Homeliving Specialist

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Office of Indian Education
South & West Agencies
P.O. Box 1060
Gallup, New Mexico 87305

IN REPLY REFER TO:

Mr. Ken Hodder
Mental Health Center
Program for Children
2600 Marble N.E.
Albuquerque, New Mexico 87106

RE: Request for Written Evidence

Dear Hodder:

To the best of my knowledge, you were recently contacted by Mr. Tom Nagahiro and Ms. Martha Tsiosdia who were conducting a highly sensitive administrative investigation at the Keams Canyon Boarding School. As a result of your meeting with these individuals it has been reported to me that your agreed to submit written statements as to your direct knowledge of alleged charges of impropriety on the part of Mr. Lee Cargile and direct knowledge of alcohol abuse by former Polacca Principal, Ted Eastwood. Should you be completing these documents, I encourage you to be as specific as possible as to dates, locations, observed activities, and who you personally contacted verbally or in writing about your observations. It is imparative that I receive your written reported as soon as possible.

Your assistance in this matter is extremely important and is sincerely appreciated.

Sincerely,

Dr. Kenneth G Ross
Assistant Director, S & W Agencies,
Education Operations

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
Office of Indian Education
South & West Agencies
Gallup, New Mexico 87305

IN REPLY REFER TO:

Mr. David Berault
Mental Health Center
Program for Children
2600 Marble N.E.
Albuquerque, New Mexico 87106

RE: Request for Written Evidence

Dear Berault:

To the best of my knowledge, you were recently contacted by Mr. Tom Nagahiro and Ms. Martha Tsiosdia who were conducting a highly sensitive administrative investigation at the Keams Canyon Boarding School. As a result of your meeting with these individuals it has been reported to me that your agreed to submit written statements as to your direct knowledge of alleged charges of impropriety on the part of Mr. Lee Cargile and direct knowledge of alcohol abuse by former Polacca Principal, Ted Eastwood. Should you be completing these documents, I encourage you to be as specific as possible as to dates, locations, observed activities, and who you personally contacted verbally or in writing about your observations. It is imparative that I receive your written reported as soon as possible.

Your assistance in this matter is extremely important and is sincerely appreciated.

Sincerely,

Dr. Kenneth G. [illegible]

Assistant Director, S & W Agencies,
Education Operations

EXIBIT P

UNITED STATES GOVERNMENT

memorandum

DATE: February 17, 1989

REPLY TO ATTN OF: Assistant Director, South & West Agencies, Education Operations

SUBJECT: See Attached

TO: Agency Superintendent for Education, Hopi Agency

You are directed to issue a formal notice that it is your intent not to renew the employment contract of Mr. Lee Cargyle. This notice should include documentation from the Keams Canyon school Boards endorsing this action. This notice is to be delivered to Mr. Cargyle with documented evidence of his receipt obtained by COB 2/24/89.

Further, you are to take steps to initiate adverse action on a proposal for removal from his present position based on his lack of professionalism associated with his responsibilities as Guidance Counselor and personal problems with alcohol which have been attested to by the staff of the Keams Canyon Boarding school.

Dr. Kenneth G Ross

UNITED STATES GOVERNMENT

memorandum

RECEIVED
MAR 1989
EDUCATION

DATE: March 1, 1989

REPLY TO ATTN OF: Assistant Director, South & West Agencies, Education Operations

SUBJECT: Amendment to Memorandum Dated February 17, 1989 Re: [illegible] Cargyle

TO: Agency Superintendent for Education, Hopi Agency

This memorandum shall serve to clarify my earlier directive dated February 17, 1989 regarding Mr. Lee Cargyle.

Based upon the investigative reports submitted to you under administratively restricted mail appropriate personnel action needs to be initiated to terminate the employment of Mr. Lee Cargyle.

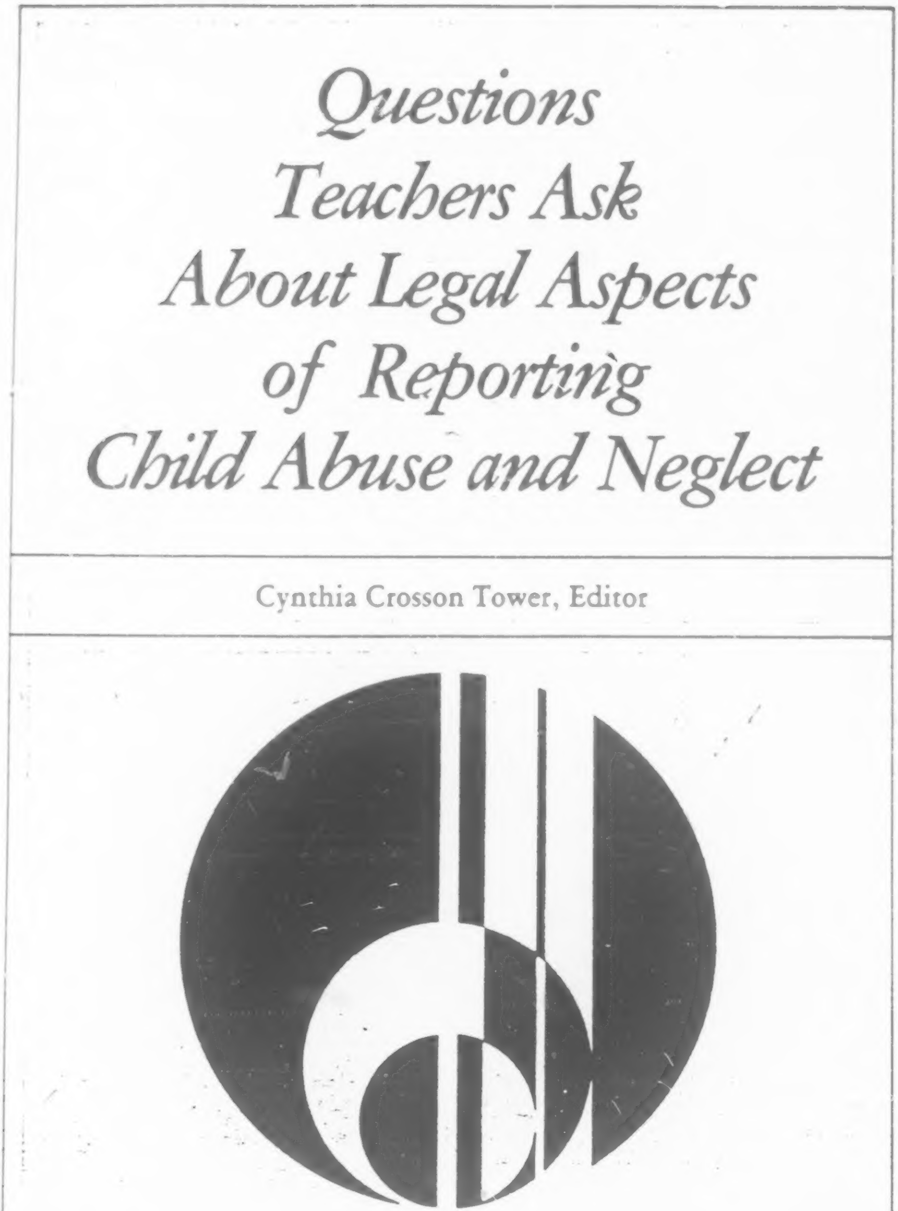
I understand that we have not afforded Mr. Cargyle the full due process provisions associated with removal for cause. This needs to be carefully addressed in your proposed actions.

Secondly, I understand that the issue of contract renewal for this current school year has been referred to the Phoenix Area Personnel Officer for a complete audit review.

Please keep this office advised on actions you intend to initiate or have taken regarding this matter.

Dr. Kenneth G. Ross

OPTIONAL FORM NO. 10
(REV. 1-80)
GSA FPMR (41 CFR) 101-11.6
5010-114



Questions Teachers Ask About Legal Aspects of Reporting Child Abuse and Neglect

Cynthia Crosson Tower, Editor

A National Education Association Publication

The Editor

Cynthia Crosson Tower is Assistant Professor and Coordinator of the Human Services Program, Behavioral Science Department, at Fitchburg State College, Massachusetts. She is the author of *Child Abuse and Neglect: A Teacher's Handbook for Detection, Reporting, and Classroom Management* and *A Guide and Plan for Conducting Six Workshops on Child Abuse and Neglect*, both published by NEA. She is also the developer of 33 other components of the NEA Training Program on Child Abuse and Neglect.

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What Is the Nature and Purpose of This Material?

As a result of working with a large number of teachers, both in my classes with undergraduate and graduate students, as well as in numerous in-service training presentations to schools, I have found certain questions repeatedly asked. These questions center on the specific roles and responsibilities of individual teachers when they are involved in reporting child abuse and neglect.

The questions usually do not have simple answers since policies and laws vary widely between particular communities, certainly between states and even within counties of the same state. Therefore, this publication is intended to serve as a general guideline and will, I hope, encourage teachers to seek further specifics in the statutes of their own localities.

All the information in the following pages resulted from the circulation of a questionnaire to the 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands. In each instance the inquiry was addressed to the Legal Services section of each Department of Social Services, or other appropriate department.

Responses were received from all 55 sources. The information has been combined into *Questions Teachers Ask About Legal Aspects of Reporting Child Abuse and Neglect*.

The original questionnaire contained 30 questions. Responses to 19 of these questions provided sufficient commonalities for compilation into this report. The remaining 11 questions elicited such a divergence of information that it was deemed impractical to incorporate these responses into a publication of this size and format. I believe this was due to a combination of factors, not the least of which may have been a lack of clarity in the phrasing of specific questions.

For that reason general, summary statements of 11 questions are provided at the conclusion of this report. No effort has been made to identify responses by source for this group of questions; rather, the information is included to indicate the lack of legal uniformity in many areas.

To help teachers in their local settings with these, and other questions, the twentieth question of this report was added when the material was sent to reporting sources for verification. (Each source verified the accuracy of the information reported as of February/March 1984.) I hope the listing of the statute covering child abuse and neglect for each jurisdiction will encourage teachers to read and become familiar with the laws in their own communities.

—Cynthia Crosson Tower

Special Note

This material is presented solely for the purpose of exchanging information, not as a legal guide. Neither the editor nor the National Education Association assumes any liability for its content or the use thereof.

We urge all readers to contact local legal authorities for clarification and advice on any specific situation.

Questions 1–20 and Responses

1. Who, in a school setting, is legally mandated to report child abuse, neglect, or sexual abuse?

Responses:	55
No Response:	0

Legally Mandated Reporters in School Setting

Jurisdiction	Anyone	Teacher	Principal	Any School Administrator/ Personnel
Alabama		X		X
Alaska		X		X*
American Samoa	X			
Arizona				X
Arkansas		X	X	X
California		X	X	X
Colorado	X			
Connecticut	X			
Delaware	X			
District of Columbia				X
Florida	X			
Georgia		X	X	X
Guam		X	X	X
Hawaii	X			
Idaho	X			
Illinois				X*
Indiana	X			
Iowa				X*
Kansas				X
Kentucky	X			
Louisiana			X	X
Maine	X			
Maryland	X			
Massachusetts		X		X*

NOTE: Teachers are mandated reporters in all 50 states and the additional 5 jurisdictions covered by this report. "Anyone" appears in 25 responses for this chart. Teachers are, therefore, mandated reporters in those jurisdictions, as well as in those that specify "teacher" and "any school administrator/personnel."

*Alaska:	School administrative staff
*Illinois:	School personnel, truant officers, social workers
*Iowa:	Certified school employees
*Massachusetts:	Educational administrator, guidance counselor, psychologist

Jurisdiction	Anyone	Teacher	Principal	Any School Administrator/ Personnel
Michigan		X	X	X*
Minnesota	X			
Mississippi		X	X	
Missouri		X	X	X*
Montana		X	X	X
Nebraska	X			
Nevada		X	X	X*
New Hampshire	X			
New Jersey	X			
New Mexico	X			
New York				X*
North Carolina	X			
North Dakota		X	X	X
Ohio		X	X	X*
Oklahoma	X			
Oregon	X			
Pennsylvania		X	X	X
Puerto Rico	X			X
Rhode Island	X			
South Carolina		X		
South Dakota		X	X	X
Tennessee	X			
Texas	X			
Utah	X			
Vermont		X	X	X*
Virgin Islands		X	X	
Virginia		X	X	X
Washington				X*
West Virginia				X*
Wisconsin		X		X*
Wyoming	X			

*Michigan: School audiologist, certified social worker, social worker, social worker technician, school counselor
*Missouri: Any other school official
*Nevada: Every school authority and teacher
*New York: School officials, professional staff members
*Ohio: Any school teacher or school authority
*Vermont: Also librarian, guidance counselor, social worker
*Washington: Any professional school personnel
*West Virginia: Any school teacher or other school personnel
*Wisconsin: Teachers, nurses, counselors, administrators

2. What legal action can be taken against the educator who does not report?

Responses:	*48*
No Response:	*7*

Legal Action Against Nonreporting Educators

Jurisdiction*	Fine	Fine and/or Imprisonment	Misdemeanor	Other
Alabama		X	X	
Alaska			X	
Arizona		X		
Arkansas		X		
California		X[1]		
Colorado			X	
Connecticut				X[5]
Delaware		X		
District of Columbia		X		
Florida			X	
Georgia			X	
Guam			X	
Hawaii			X	
Idaho				X[6]
Indiana		X		
Iowa			X	
Kansas		X		
Kentucky		X		
Louisiana		X		
Maine	X			
Massachusetts	X			
Michigan				X[3]
Minnesota			X	
Missouri			X	
Montana				X[2]
Nebraska		X		

*Only those jurisdictions that responded to this question appear in this chart.

[1] First offense

[2] Civil liability for damages caused by failure to report

[3] Fine only

[4] Second offense

[5] Maximum fine of $500 for certain specified nonreporters. See the Connecticut General Statutes, Section 17-38a, for the complete list; school teacher, school principal, school guidance counselor, and registered or licensed practical nurse are among those specified.

[6] No penalty

Jurisdiction*	Fine	Fine and/or Imprisonment	Misdemeanor	Other
New Hampshire			X	
New Jersey		X		
New Mexico	X		X	
New York			X	
North Dakota			X	
Ohio			X	
Oklahoma			X	
Oregon	X			
Pennsylvania	X[1]		X[4]	
Puerto Rico		X[3]	X	
Rhode Island		X	X	X[2]
South Carolina		X	X	
South Dakota	X		X	
Tennessee			X	
Texas		X		
Utah			X	
Vermont	X			
Virgin Islands	X		X	
Virginia		X[3]		
Washington			X	
West Virginia		X		
Wisconsin		X		

*Only those jurisdictions that responded to this question appear in this chart.

[1] First offense

[2] Civil liability for damages caused by failure to report

[3] Fine only

[4] Second offense

3. Under what age is a child protected by child abuse statutes?

Responses:	*55*
No Response:	*0*

Forty-six states[1] plus Guam,[2] Puerto Rico, and the Virgin Islands reported 18 years.

One state, Nebraska, reported 16 years.

One state, Missouri, and American Samoa reported 17 years.

One state, Wyoming, reported 19 years.

District of Columbia and South Carolina reported 18 years and under.

[1] Ohio reported "as well as any crippled or otherwise physically or mentally handicapped child under 21."

[2] Guam reported "under the age of 18 unless physically or emotionally handicapped."

4. Under what circumstances must a teacher report child abuse?

Responses: 53
No Response: 0

Circumstances Requiring Teachers to Report

Jurisdiction	Suspicion	Reasonable Cause to Believe	Reasonable Cause to Suspect	Other
Alabama	X			
Alaska		X		
American Samoa		X		
Arizona				X*
Arkansas			X	
California			X	
Colorado	X	X	X	
Connecticut		X		
Delaware			X	
District of Columbia	X			
Florida	X	X	X	
Georgia		X		
Guam		X		
Hawaii	X			
Idaho		X		
Illinois		X		
Indiana		X		
Iowa		X		
Kansas			X*	
Kentucky		X		
Louisiana		X		
Maine			X	
Maryland	X			
Massachusetts		X		
Michigan			X	
Minnesota		X		
Mississippi		X		
Missouri			X	
Montana			X	
Nebraska		X		
Nevada	X			

*Arizona: Upon observation or examination it appears that nonaccidental injury has been sustained

*Kansas: Reason to suspect

Jurisdiction	Suspicion	Reasonable Cause to Believe	Reasonable Cause to Suspect	Other
New Hampshire	X			
New Jersey		X		
New Mexico	X			
New York	X			
North Carolina	X			
North Dakota	X			
Ohio	X			
Oklahoma		X		
Oregon		X		
Pennsylvania		X		
Puerto Rico	X			
Rhode Island				X*
South Carolina		X		
South Dakota	X			
Tennessee		X		
Texas		X		
Utah		X		
Vermont		X		
Virgin Islands		X		
Virginia	X			
Washington		X		
West Virginia			X	
Wisconsin			X	
Wyoming		X		

*Rhode Island: Reasonable cause to know or suspect

5. Does your state give teachers discretion NOT to report?

Responses:	*55*
No Response:	*0*

All states plus American Samoa, District of Columbia, Guam, Puerto Rico, and the Virgin Islands reported as follows:

NO

6. Does your state allow anonymous reports?

Responses:	*53*
No Response:	*2*

All states plus Guam and the Virgin Islands reported

YES

with these exceptions:

California:	Reports by school personnel in scope of employment must include the name of the person making them.
District of Columbia:	Not by persons who are required by law to make a report.
Georgia:	Question not addressed by statute.
Maine:	Not by persons who are required by law to make a report.
Massachusetts:	All mandated reporters are required to give the agencies their names, but anonymous reports are accepted.
Michigan:	No, but the name of the reporter is confidential.
Minnesota	No, but the name of the reporter is confidential.
New York:	Permits anonymous reporting, but those required to report cannot do so anonymously.
North Dakota:	Question not addressed by statute.
Wisconsin:	The statute does not address this issue specifically, but seems to contemplate that mandatory reporters will identify themselves.

7. What type of immunity is a teacher given once the report is made in good faith and without maliciously false statements?

Responses:	33
No Response:	0

Teacher Immunity

Jurisdiction	Court	Cannot Be Sued	No Civil or Criminal Liability	None
Alabama			X	
Alaska			X	
American Samoa				X
Arizona			X	
Arkansas			X	
California			X	
Colorado			X	
Connecticut			X	
Delaware			X	
District of Columbia		X	X	
Florida			X	
Georgia			X	
Guam	X		X	
Hawaii		X		
Idaho			X	
Illinois			X	
Indiana			X	
Iowa			X	
Kansas			X	
Kentucky	X		X	
Louisiana		X		
Maine			X	
Maryland			X	
Massachusetts			X	
Michigan		X	X	
Minnesota			X*	
Mississippi			X	
Missouri			X	
Montana			X	
Nebraska		X		

*Minnesota/ Also from retaliation by employer

Jurisdiction	Court	Cannot Be Sued	No Civil or Criminal Liability	None
Nevada		X	X	
New Hampshire			X	
New Jersey			X	
New Mexico			X	
New York			X	
North Carolina			X	
North Dakota			X	
Ohio			X	
Oklahoma			X	
Oregon			X	
Pennsylvania			X	
Puerto Rico			X	
Rhode Island			X	
South Carolina			X	
South Dakota		X	X	
Tennessee		X		
Texas		X		
Utah	X			
Vermont			X*	
Virgin Islands		X		
Virginia		X		
Washington			X	
West Virginia			X	
Wisconsin			X	
Wyoming		X		

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*Vermont: Libel or slander

8. If a child reports abuse, neglect, or sexual abuse to the teacher, does the teacher or the school have the right to detain that child on the premises until the report can be made?

Responses: *45*
No Response: *10*

YES

- American Samoa
- Indiana
- Nebraska
- Tennessee
- Texas
- Virgin Islands
- Wyoming

NO

- Alabama
- Arizona
- Arkansas
- California
- Colorado
- Connecticut
- District of Columbia
- Florida
- Guam
- Hawaii
- Idaho
- Illinois
- Iowa
- Kansas
- Louisiana
- Maine
- Maryland
- Massachusetts
- Michigan
- Missouri
- Nevada
- New Jersey
- New Mexico
- New York
- North Carolina
- Ohio
- Oklahoma
- Oregon
- Puerto Rico
- Rhode Island
- South Carolina
- South Dakota
- Utah
- Vermont
- Virginia
- Washington
- West Virginia

NOT ADDRESSED BY STATUTE

- North Dakota

9. Does your state recognize a parent's right due to religious beliefs to withhold medical treatment?

Responses:	49
No Response:	6

YES

Alabama
Alaska
American Samoa
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Guam
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky*
Louisiana
Maine
Maryland
Massachusetts*
Michigan
Minnesota
Mississippi
Missouri
Nevada
New Hampshire
New Jersey
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Rhode Island
South Dakota
Texas
Utah
Vermont
Virginia
West Virginia
Wyoming

NO

Montana
Nebraska
Puerto Rico
South Carolina*
Tennessee
Washington

NOTE: Policies and statutes vary widely on this issue. Consult your local authorities for the extent and limitations specified.

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*Kentucky:	Does "not preclude a court from ordering that medical services be provided to the child, where his health requires it."
*Massachusetts:	Limited.
*South Carolina:	Recognizes nonmedical remedial health care.

10. To whom should a teacher report?

Responses:	53
No Response:	0

NOTE: Teachers should first consult their local school guidelines, when available. However, any school policy which indicates "no reporting" or "no involvement" does *not* supersede a mandatory reporting law.

Alabama:	County or State Department of Pensions and Security or law enforcement
Alaska:	Division of Family and Youth Services, Department of Health and Social Services, or any peace officer
American Samoa:	Attorney General or Child Abuse Center, Department of Health Services
Arizona:	Any law enforcement agency or child protective services
Arkansas:	The person in charge of the school or designated agent who is then responsible for making the report or causing the report to be made
California:	A county welfare department, a county probation officer, or a police or sheriff's department
Colorado:	County Department of Social Services
Connecticut:	Department of Children and Youth Services
Delaware	Delaware Division of Child Protective Services
District of Columbia:	Department of Human Services, Child and Family Services Division, Intake and Crisis Services Branch; Youth Division, Metropolitan Police Department
Florida:	State of Florida, Department of Health and Rehabilitative Services, Abuse Registry
Georgia:	Person in charge of school
Guam:	Child Protective Services, Department of Public Health and Social Services
Hawaii:	Principal, and then Department of Social Services
Idaho:	Law Enforcement, Idaho Department of Health and Welfare
Illinois:	Department of Children and Family Services
Indiana:	County Department of Public Welfare, Child Protective Services
Iowa:	Building administrator or designee
Kansas:	Kansas State Department of Social and Rehabilitation Services local offices
Kentucky:	The Department for Social Services, Cabinet for Human Resources
Louisiana:	Division of Evaluation and Services
Maine:	Department for Human Services
Maryland:	Local department of social services in the county in which the child resides, or abuse was alleged to occur, if different
Massachusetts:	Department of Social Services, or person in charge of school
Michigan:	Department of Social Services in the county where the child lives
Minnesota:	Police department, county sheriff, or local welfare agency
Mississippi:	Mississippi Department of Public Welfare
Missouri:	Missouri Division of Family Services
Montana:	County Welfare Department or State Department of Social and Rehabilitation Services

Nebraska:	Department of Social Services, toll-free number, Police Department
Nevada:	Nevada State Welfare, law enforcement or county agency authorized by the court to receive reports
New Hampshire:	Local office of the State Division for Children and Youth Services
New Jersey:	Division of Youth and Family Services and principal or designee
New Mexico:	District Attorney and Human Services Department
New York:	New York State Central Register
North Carolina:	County Department of Social Services where child resides or is found
North Dakota:	County Social Service Agency
Ohio:	The County Department of Welfare with Children Services, Children Services Board, or law enforcement
Oklahoma:	Department of Human Services, County Office
Oregon:	Children's Service Division and law enforcement
Pennsylvania:	Principal or designee
Puerto Rico:	Departmento de Servicios Sociales de Puerto Rico Registro Central
Rhode Island:	Rhode Island Department for Children and Their Families
South Carolina:	County Department of Social Services, or law enforcement in the county where the child resides
South Dakota:	Local state attorney, local law enforcement, or the Department of Social Services
Tennessee:	Department of Human Services, Juvenile Court, or law enforcement
Texas:	Texas Department of Human Resources and local law enforcement officials
Utah:	Utah Division of Family Services
Vermont:	Department of Social and Rehabilitation Services
Virgin Islands:	Department of Social Welfare, Juvenile Bureau, Department of Public Safety
Virginia:	Local Department of Social Services or statewide toll-free hotline
Washington:	Child Protective Services or law enforcement
West Virginia:	Local office of Department of Health and Human Services or toll-free hotline
Wisconsin:	County Department of Social Services or county sheriff or city police department
Wyoming:	Child Protective Agency or law enforcement

11. Can a report be made by telephone?

Responses:	*55*
No Response:	*0*

All sources responded YES to this question.

Toll-free telephone lines are provided for reporting by the following:

Arkansas:	1-800-482-5964
California:	Each county has a toll-free number
Connecticut:	1-800-842-2288
Delaware:	1-800-292-9582
Florida:	800-342-9152 (out of state 1-800-4-A-CHILD)
Idaho:	Each regional office has a toll-free number
Illinois:	800-252-2873
Indiana:	Each county has a toll-free number
Iowa:	1-800-362-2178
Kentucky:	1-800-752-6200
Louisiana:	1-800-LA-CARES
Maine:	1-800-452-1999
Massachusetts:	800-792-5200
Mississippi:	1-800-222-8000
Missouri:	1-800-392-3738
Montana:	1-800-332-6100
Nebraska:	800-652-1999
Nevada:	800-992-5757 (649-3611, Clark Co.; 323-6111, Washoe, Co.)
New Jersey:	800-792-8610
New Mexico:	800-432-6217
New York:	1-800-342-3720
Oklahoma:	1-800-522-3511
Pennsylvania:	800-932-0313
Puerto Rico:	800-724-1333
Rhode Island:	1-800-662-5100
Texas:	800-252-5400
Virginia:	1-800-552-7096
Washington:	1-800-562-5624
West Virginia:	1-800-552-6513

12. If a report is made verbally, must a written report be made?

Responses: 55
No Response: 0

YES

Alabama
American Samoa
California
Colorado
Connecticut
Hawaii
Iowa
Louisiana
Maryland
Massachusetts*
Michigan
Minnesota
Mississippi
Missouri
Nevada*
New Mexico
New York
North Dakota
Pennsylvania
Puerto Rico
Vermont

NO

Alaska
Arkansas
District of Columbia
Florida
Guam
Idaho
Montana
New Hampshire
New Jersey
North Carolina
Oklahoma
Oregon
South Carolina
South Dakota
Tennessee
Texas
Utah
Virgin Islands
Virginia
Wyoming

QUALIFIED

Arizona
Delaware
Georgia
Illinois
Indiana
Kansas
Kentucky
Maine
Nebraska
Ohio
Rhode Island
Washington
West Virginia
Wisconsin

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*Massachusetts: By mandated reporter
*Nevada: Unless the reporter wants to remain anonymous

. 13. Is the social service agency reported to obligated to investigate all reports, if they meet the legal definitions of what is reportable?

Responses:	*33*
No Response:	*0*

All sources responded YES, except:

Georgia: No
Nebraska: No

14. Is a case automatically heard in court?

Responses:	*34*
No Response:	*1*

The following sources responded YES:

American Samoa
Arizona*
Puerto Rico
South Carolina

*Arizona: Once a dependency petition is filed

All other sources (except Virgin Islands) responded NO.

15. If a family will not cooperate, might a case go to court?

Responses:	*33*
No Response:	*2*

All sources (excluding Alaska and Georgia) responded YES, often qualified by such words as "conditioned."

16. Does law or policy designate a time period during which a report must be investigated?

Responses:	*55*
No Response:	*0*

Sources answering YES designated a wide variety of time periods (ranging from immediately to two hours to thirty days). Teachers in those areas should consult local authorities for specific information.

YES

Alabama
Alaska
American Samoa
Arizona
Arkansas
California
Colorado
Delaware
District of Columbia
Florida
Guam
Hawaii
Idaho
Illinois
Indiana
Iowa
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
North Dakota
Ohio
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Vermont
Virgin Islands
Virginia
Washington
West Virginia
Wisconsin
Wyoming

NO

Connecticut
Georgia
Kansas
Nebraska
Oklahoma
Puerto Rico

17. **Is the name of the reporter kept confidential?**

Responses: 54
No Response: 1

YES

Alabama*
American Samoa
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Guam
Hawaii
Idaho
Illinois
Indiana
Iowa
Louisiana
Maine
Maryland
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Texas
Utah
Virgin Islands
Virginia
Washington
West Virginia
Wisconsin
Wyoming

NO

Georgia

QUALIFIED

Kansas
Kentucky
Massachusetts
Michigan
New Jersey
New Mexico
New York
Vermont

*Alabama: Unless subpoenaed by the court

18. Are school contacts involved in an investigation?

Responses:	*55*
No Response:	*0*

The following sources responded YES:

Alabama
American Samoa
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Guam
Hawaii
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Dakota
Oklahoma
Oregon
Pennsylvania
Puerto Rico
Rhode Island
South Carolina
South Dakota
Tennessee
Utah
Vermont
Virgin Islands
Virginia
Washington
West Virginia
Wyoming

The following sources indicated various restrictions or diversity of policy on this question:

Alaska
Georgia
Idaho
Maine
North Carolina
Ohio
Texas
Wisconsin

Teachers should consult local authorities for further information.

19. Is the social service agency with whom the report is filed required to advise the mandated reporter of results?

Responses: *34*
No Response: *1*

YES

- American Samoa
- Arkansas
- California
- Hawaii
- Idaho
  (48 hours)
- Illinois
- Louisiana
  (at termination of investigation)
- Maryland
- Massachusetts
  (60 days)
- Missouri
  (45 days)
- New Mexico
- North Carolina
- Utah
- Virginia
- Wisconsin

NO

- Alabama
- Alaska
- Arizona
- Colorado
- Connecticut
- Delaware
- District of Columbia
- Georgia
- Guam
  (not mandated, but a matter of agency policy)
- Indiana
- Kansas
- Kentucky
- Maine
- Michigan
- Montana
- Nevada
  (cannot advise reporter)
- New Hampshire
- New Jersey
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- Rhode Island
- South Carolina
- Tennessee
- Texas
- Virgin Islands
- Washington
- West Virginia
- Wyoming

OTHER

- Florida
  (not addressed)
- Iowa
  (on request)
- Minnesota
  (on request, except when not in child's best interest)
- Mississippi
  (not addressed)
- Nebraska
  (on request)
- New York
  (on request)
- Puerto Rico
  (on request)
- South Dakota
  (shared, if necessary)
- Vermont
  (by policy)

20. What statute in your state should a teacher consult for specific information on child abuse and neglect?

Responses:	*34*
No Response:	*1*

Alabama:	*Code of Alabama 1975*, Sections 26-14-1 through 26-14-13
Alaska:	Alaska Statutes, 47.17
Arizona:	Arizona Revised Statutes (A.R.S.), Sections 13-3620, 8-223, 8-546
Arkansas:	Arkansas Statutes, 42-807 through 42-818, as amended
California:	Penal Code, Sections 11165-11174
Colorado:	Colorado's Children Code, Article 10, 19-10-101, Child Protection Act of 1975
Connecticut:	The Connecticut General Statutes, Section 17-38a
Delaware:	Delaware Code, Section 1, Chapter 9, Title 16
District of Columbia:	Prevention of Child Abuse and Neglect Act, D.C. Code 16-2301, Chapter II, Sections 1351, 1352, 1357
Florida:	Section 415, Florida Statutes (previously Section 827.07 F.S.)
Georgia:	Georgia Code, 74-111
Guam:	P.L. 14-137, The Child Abuse Reporting Law
Hawaii:	HRS 30, Child Abuse; HRS 587, Child Protection Act
Idaho:	Idaho Code (Child Protective Act), 16-1600
Illinois:	The Abused and Neglected Child Reporting Act, Illinois Revised Statutes, Chapter 23, par. 2051 et seq. (1981). In February 1984 the 1983 volumes of the Illinois Revised Statutes were published.
Indiana:	Indiana Juvenile Code (IC 31-6)
Iowa:	Iowa Code, Chapter 232 (Sections 67 through 77); Iowa Code, Chapter 235A
Kansas:	The Kansas Code for Care of Children: K.S.A. 1983 Supp. 38-1501 through 38-1593
Kentucky:	KRS 199.335, KRS 199.011(6)
Louisiana:	Louisiana Revised Statutes, 14:403
Maine:	22 MRSA Sections 4001-4071 (Mandated Reporting, 22 MRSA Sec. 4011; Immunity from Liability, 22 MRSA Sec. 4014; Interview of Child and School, 22 MRSA Sec. 4021)
Maryland:	Family Law Article, Title 5—Children; Subtitle 7, Neglected Children; Subtitle 9, Child Abuse
Massachusetts:	Massachusetts General Laws, c.119, §§51A-51Q, DSS Regulations 110, C.M.R. 4.00
Michigan:	The Child Protection Law, Act No. 238 of 1975 (MCLA 722.591-722.594)
Minnesota:	Minnesota Statute 626.556
Mississippi:	Mississippi Code, Sections 43-21-353, 43-21-355
Missouri:	Child Abuse 210.110—210.165, Revised Statutes of Missouri (Cum. Supp. 1983)
Montana:	Section 41-3-101 et seq., Montana Codes Annotated
Nebraska:	28-710 R.R.S. 1943
Nevada:	NRS 200.501-200.509
New Hampshire:	RSA 169-C, The Child Protection Act
New Jersey:	N.J.S.A. 9: 6-1 et seq.; N.J.S.A. 30: 4C-1 et seq.
New Mexico:	Children's Code, Sections 32-1-1 through 32-1-53, N.M.S.A. 1978, as amended
New York:	Chapter 1039 of the Laws of New York, Title 6, Child Protective Services (copies available from New York State DSS, Division of Services, 40 N. Pearl Street, Albany NY 12243)

North Carolina:	North Carolina Juvenile Code, General Statutes, Chapter A, Article 41
North Dakota:	NDCC 50-25.1, Child Abuse and Neglect
Ohio:	Am. Sub. H B85, Section 2151.421 of the Ohio Revised Code. Also Sections 2919.22 and 2907 of the Ohio Revised Code for supplementary information
Oklahoma:	21 O.S. 1981, Section 845-847
Oregon:	Child Abuse Reporting, ORS 418.740-418.990
Pennsylvania:	The Child Protective Services Law found at 11 P.S. 2201 et seq.
Puerto Rico:	Ley Numero 75 de 28 de mayo de 1980, 8 laws of Puerto Rico Annotated, Sections 401-437, Chapter 23 (Child Protection)
Rhode Island:	Chapter 11, General Laws of Rhode Island
South Carolina:	South Carolina Code, 1976, as amended in 1983: Sections 20-7-110, 20-7-480, 20-7-490, 20-7-500, 20-7-510, 20-7-520, 20-7-530, 20-7-540, 20-7-550, 20-7-560, 20-7-610, 20-7-640, 20-7-650, 20-7-660, 20-7-670, 20-7-680, 20-7-690
South Dakota:	S.D.C.L. 26-8-6, 26-10-10, 26-10-12, 26-10-12.3, 26-10-14, 26-10-15
Tennessee:	Tennessee Code Annotated, Title 37, Chapter 12
Texas:	Chapter 34, Texas Family Code, V.T.C.S.
Utah:	Utah Code Annotated 58-3B-2, et seq.
Vermont:	33 VSA, Chapter 14
Virgin Islands:	Title V, Virgin Islands Code, Act No. 4855, Section 15-0151
Virginia:	Code of Virginia, Section 63.1-248.1, et seq.
Washington:	Revised Code of Washington: 26.44, 74.13, 13.34
West Virginia:	49-6A-2, Reporting; 49-6A-5, Reporting Procedures; 49-1-3, Neglected Child and Abused Child defined
Wisconsin:	Section 48.981, Wisconsin Statutes
Wyoming:	WS 14-3-201 through 215

11 Questions with Responses Lacking Legal Uniformity

The following 11 questions provided a multiplicity of responses. They are presented here without individual source identification as material for further study by teachers.

Teachers should review their state statute for clarification, not only for this group of questions but for all other areas concerning child abuse and neglect. In those instances where the statute does not address the concern, local authorities should be contacted for appropriate procedures.

1. Can a teacher in your state legally take photographs of a child's bruises? Can anyone else in a school setting photograph? Are the photographs admissible in court?

Yes	(for all three parts):	22
No	(for all three parts):	14

All yes responses indicated that the photographs were admissible in court only and if properly authenticated.

Individual responses included these qualifications: "Per district policy"; "Determined by judge"; "Only for the purpose of disseminating the photographs with the report"; "Only persons required to *investigate* can take photographs"; "Not addressed in statute"; "Taken only by caseworker, police, or hospital"; "Only in the presence of law enforcement officer or social worker"; "Depends on the child's privacy rights versus the school"; "Should be cleared with school attorney."

2. Can anyone tape a child's own verbal report of how he/she was abused? Who may do this taping? Is this tape admissible in court?

Yes	(for all three parts):	16
No	(for all three parts):	5

Individual responses included these comments: "Taping can be done only by prosecuting attorney"; "Can be taped in sexual abuse case only, but not by school personnel"; "Per district policy"; "Not addressed in statute"; "By law enforcement or health and welfare caseworker only"; "Not encouraged, but no prohibition"; "Department of Education policy is for teachers to report suspected incident(s) and let the investigative agency do any taping necessary"; "School social worker."

3. By law, how long must a record be kept open by social service agency?

The most common response was "No statutory provisions." Some individual responses included the following: "Permanent," "Until child's 28th birthday," "Up to 24 years," "5 years," "1 year."

4. Does the teacher have recourse if the case is screened out or not investigated?

The ambiguity of the question brought a myriad of responses that failed to provide a common pattern. However, approximately 50% of the responses indicated recourse was available, but was qualified and/or restricted by a large number of factors.

5. Are child abuse, neglect, and sexual abuse reported to the law enforcement agency or district attorney?

No clear pattern emerged from the responses. When this question was answered (by approximately 30% of the respondents), the answers appeared to be about equally divided, but with a wide range of qualifications.

6. Are charges pressed against the abuser in criminal court?

Yes:	14
No:	0

A sampling of responses indicated the following qualifications: "Sometimes"; "Can be, but not mandated"; "Sexual abuse only"; "Law enforcement decides"; "Depends upon the severity of the case"; "Not usually"; "Varies from county to county and prosecuting attorney."

7. **Does your state make formal use of a child protection team? If yes, are teachers and/or counselors included on the team?**

Yes	**(team):**	**26**
No	**(team):**	**12**

Within both yes and no responses, most sources qualified their answer by indicating that policy differed from county to county or district to district. Within the 26 yes responses, 4 sources reported school personnel were not included while the majority believed they were.

8. What is court to determine: custody of child, incarceration of abuser, or both?

Of the 41 responses to this question, 39 indicated custody of child and/or both. Two states stipulated incarceration. The 39 custody of child and/or both answers invariably qualified the response with such comments as "Placement, dependency, visitation"; "Distinction made by type of court"; "When separate criminal charge is filed"; "Determined by District Attorney."

9. Is court closed hearing, open hearing, or judge's chambers? Are witnesses such as teachers used?

Open Hearing:	33
Closed Hearing:	8
Variant:	10

Regardless of type of hearing, 49 responses indicated teachers might be used as witnesses. No response specified teachers would not be called, although distinctions were drawn between juvenile and criminal hearings; several sources stated the type of hearing is determined by the judge or by decision of the individual court; the reporter is usually not used as a witness; hearing determined by dependency or offense case.

10. Is treatment of family done by investigator, another social worker, or lawyer appointed by court?

An insufficient number of direct responses to this question was received to provide any type of general statement.

11. Is the investigator likely to contact teachers?

Yes:	45
No:	2

The yes responses were frequently qualified by such words as "possibly," "in some cases," "not prohibited," and "perhaps." One state indicated "The reporter usually remains anonymous"; another stated, "If teachers report, they must be contacted."

APPENDIX

FEBRUARY 22, 1989

MARGARET J. ALLEN
GILA RIVER INDIAN COMMUNITY
SACATON, AZ

OVERVIEW:

Over the past 12 months the Tribal Social Services staff at Gila River has identified 6 teen perpetrators. Three of the perpetrators have been in treatment facilities and two of those three have been diagnosed as teen pedophiles. The other 3 identified perpetrators are awaiting investigation and tribal prosecution. Two of the molest cases have been presented for federal prosecution and have been declined.

Services for pedophiles and specifically teen perpetrators are e[illegible], and difficult to locate. Currently Gila River Tribal Social Services is incurring the financial responsibility for treatment services through BIA 638 monies. Indian Health Services has been reluctant to become involved in payment for treatment services for teen perpetrators. Indian Health Services has traditioncally been reluctant to provide resources for the mental health treatment of Indian children and often view themselves as a residual payee for such services. The Bureau of Indian Affairs will authorize payment for residential services for "cost of care" but will not authorize payment for therapuetic or psychiatric services for juveniles. These policies make it difficult for tribes to find appropriate serrvices for children with mental health problems.

CASES:

1. *15 year old male*
   Diagnosed: depressed with psychotic features
   sexual identity disturbance
   substance abuse
   personality disorder
   conduct disorder

   Onset of treatment was after hopitalization for homicidal and suicidal threats to self and family members. Admitted to the molestation of both male and female children between the ages of 5 to 11.

   Number of identified minor victims: 5

1. *Contacts to secure treatment*

22 phone calls with 8 total contact persons
3 office visits

FINAL OUTCOME:

BIA stated that they can not pay for medical or mental health services.

IHS stated that they would consent to 30 days treatment and would pay ½ of the $12,000.00 fee for treatment.
The local service unit was unwilling to commit any future monies to similar treatment for other perpetrators. Verbally told that no more local funds will be expended to pay for mental health treatment.

CASE 2.

14 year old male

Diagnosed: *pedophile*
suicidal
homicidal
psychotic episodes

After a 60 day hospitalization the Phoenix Indian Medical Center determined that the child was to be discharged from the contract hospital as soon as possible. Hospital staff viewed the child as a danger to himself and others and as a continual perpetrator of younger children. Child identified 4 victims that ranged in age from 5 - 8 years of age.

After a lengthly discussion of the expense and long term naure of the needed treatment the IHS psychologist stated that if Tribal Social Services was unable to pay for residential treatment then the child was to be returned to the Gila River Community. IHS was unwilling to pay for any further hospitalization and unwilling to pay for further treatment. A discharge date was set for 2 weeks from the staffing date.
IHS no longer viewed the patient as "acute" and could no longer pay for hospitalization and was no longer obligated to pay for services.

The minor child was refused by 3 residential facilities due to the seriousness of his disturbance. Child was discharged by the hospital on the projected discharge date and was placed in detention until placement could be located.

CASE 3.

11 year old female

Diagnosis: chemical addiction
alcohol addiction
anti social personality
border line personality elements
conduct disorder

Female molested since age of 6 with several incidences of runaway, toxic vapor useage, alcohol intoxication, and prostitution.

IHS agreed to pay for a 30 day detoxification program but no further services would be paid for after the detoxification program. The child was admitted for 30 day program and was released after 11 days in treatment because of chronic addiction.

The treatment program classified the child as severely disturbed and in need of long term mental health treatment with preference for a locked facility.

IHS did not view the child as an "acute" mental health problem and had no other services to offer. If Tribal Social Services was unable to provide placement for the child then she was to be released to the community.

Requests for placement for the child were refused by 4 residential care facilities and the child was placed after 4 months in the Tribal detention facility.

CASE 4.

13 year old female

Diagnosis: Toxic vapors
alcohol addiction
chronic runaway
suicidal ideation and action

Minor had been placed in residential placement by Tribal Social Services for over 12 months and was discharged from placement due to chronic run away behaviors. Child was returned to the community and began exhibiting psychotic behaviors with hallucinations (visual and Auditory). Child was hospitalized on an "acute" admission by IHS and then released.

Child was then found on a roof of a Phoenix restuarant and was threatening to jump. She was taken from the roof top by the fire department and evaluated. At the time of her evaluation she was not seen as acute and was discharged to her parents.

Within seven months she had run from home on numerous occassions and was again hospitalized due to psychotic behaviors with hallucinations. During her hospitalization she swallowed tacks and set fire to her self and her hospital bed.

Again after being evaluated by IHS staff she was found to be "no longer acute" and was released from the contract hospital. The Gila River Indian Community requested additional services for the minor due to the seriousness of her mental health problems through IHS. Indian Health Services responded that the mental health monies available were only for "acute" cases and there are no resources for aftercare or on-going mental health services. IHS also stated that it is their policy to be the residual payee and did not view the requested services as their responsibility.

CASE 4.

OUTCOME:

Due to the chronic nature of the childs mental health needs and due to extensive newspaper publicity about the case the State of Arizona took jurisdiction of the case and placed the child in the state mental health facility.

IHS has no services for long term mental health care for juveniles in Arizona. IHS ahs been unable to develop a protocol for temporary hospitalization with the state hospital and will not provide care after the 10 day acute evaluation period.

Overall the services offfered by IHS include a 30 day detoxification program which is often ineffective for children who have multi-generational addiction in their families and who are often multi-drug addicted. The 30 day time frame offers little but a short reprieve from a problem that plagues over 50% of the Native American population.

In reality, no one wants to be responsible for the mental health care of the native american population. Service agencies are continually confronted with terms such as "residual payee", "acute", and issues of treatment priorities.

TESTIMONY:

GILA RIVER INDIAN COMMUNITY JUVENILE DETENTION CENTER

The Gila River Community began working with the BIA Law Enforcement in September 1986 to develop a treatment program for juveniles who were to be detained in the Gila River Detention facility. The facility was to be opened by the BIA in February 1987 and juvenile offenders were to be placed in the facility at that time.

After several meetings that involved a large delegation from the community a memorandum of understanding was developed an submitted to the BIA-Pima Agency in June 1987. The communities intent was to provide support services to the juveniles in the facility due to the lack of funding. After several inquiries about the memorandum the Pima Agency responded in January 1988 with approval for the memorandum . Even after the administrative approval the facility remained a primary lock-up facility with minimal services to juveniles. The tribe had also assisted the BIA in receiving a $500,000.00 emergency appropriation for the facility with the understanding that the monies would be used to hire staff for treatment services. This did not occur and the Bureau cited difficulties in hiring and gaining job descriptions for positions outside of the Law Enforcement scope of work. Additionally , allegations of sexual molestation, poor dietary planning, and other misuse of funds were brought to the the communities attention. The concerns of the community centered around issues of meals that consisted of rice and raisins and hot dog soup. Concerns also arose around budget expenditures for tires, shotguns, hand guns, tactical uniforms, radios, salaries, and other equipment that was clearly not used in the Juvenile Detention Facility.

After several attempts to clarify the situation the Tribe voted to envoke the Indian Self Determination Act and to contract for the facility. This was completed in September 1988.

FORUM ON CHILD PROTECTION IN INDIAN COUNTRY HELD ON FEBRUARY 7-8, 1989 AT THE INDIAN HEALTH SERVICES - CENTRAL OFFICE IN ROCKVILLE, MD.

The Bureau of Indian Affairs, Branch of Social Services for the Northern Pueblos Agency, is located in the northern area of Santa Fe, New Mexico, serving a population of approximately 7,651 in the Eight Northern Pueblo Tribes; Taos, Picuris, San Juan, San Clara, San Ildefonso, Nambe, Pojoaque, and Tesuque.

The primary function of the BIA Social Services Program is to provide a program for direct services for the eight northern pueblos located in the remote areas of northern New Mexico. These communities currently being served are services in; Child Welfare/Protective Services, General Assistance (financial aide), a Tribal Work Experience Program, and a Miscellaneous Program which includes; (burial assistance and emergency assistance).

Our program operation consists of a Supervisory Social Worker(MSW), Social Worker (MSW), a part-time Social Services Representative, a Secretary who is currently temporary, and a Probation Officer who is currently under the supervision of our Branch, but funded from another program. Our program is operating as a Crisis Intervention Program specifically dealing with Child Protection Cases. Our goals and objectives are to provide direct task oriented services for protection of rights and best interests of Indian children. We also advocate awareness and prevention within tribes promote training and education (technical assistance) with our local communities. Our Program also monitors two PL 93-638 TWEP Contracts and provide technical assistance to the two tribes as per need.

Universally, we are facing the same basic concerns and needs as other areas in the country. More specifically, we would like to address some concerns as barriers we are facing in Child Protection in Indian Country:

BIA Social Services:

- Inadequate Child Protection Services due to our limited Social Work Staff which is the result of inadequate funding limited FTE our agency is currently facing; thus hampering our abilities in providing more direct services (being "spread too thin"and on a minimal basis). Services currently being provided is handled only on a crisis to crisis situation.

- Lack of protocol and procedures are currently not established with our local tribes and BIA.

- Lack of licensed Emergency Shelter Homes and Foster Homes. No Foster Homes Standards or guidelines in place, however, we follow State and Tribal Standards if they exist.

- Lack of Resources and inadequate Rehabilitative Programs to address our problems with alcoholism or chemical abuse both with parents and children.
- Lack of professional prosecutor's and lack of qualified expert witnesses (also federal) in court proceedings both Tribal and District Courts, in the adjudication of Child Welfare Cases.
- Jurisdictional Problems exist with Tribes, State, and BIA.
- Our current Quality Control Tools being used in evaluating Social Services Programs through out the country, needs revision which should be designed more specific, shorter forms, and should meet the appropriate needs of our communities (currently, too long and too general).

BIA Law Enforcement:

- Lack of interviewing skills in Sexual Abuse Investigations, which often results in an inadequate, and unsubstantiated and inconclusive investigation thus resulting in declination of cases by the U. S. Attorney's Office.
- Lack of coordination between BIA Social Services and Law Enforcement (BIA and Tribal).
- Lack of protocol and reporting procedures (BIA and Tribe).
- Lack of criminal prosecutor's (no available funds).
- Lack of interest in participation in our local CPT's and some resistance in providing up-dated information as to the status of cases.
- Lack of setting time frames to complete investigations and submitting reports on a timely manner.

Tribal Court Systems and Tribes:

- Lack of trained and/or uneducated Tribal Judges (sometimes with no legal background).
- Lack of Children or Juvenile Codes to operate within tribes. Tribal priorities often are prioritized on land related issues such as; forestry, roads, water rights, etc. Children and Human Services are usually considered last, but yet 75-100% of these problems exist.

- Lack of protocol and procedures between BIA and Tribal Courts to identify specific role responsibilities, time frames for submitting reports, and unclear expectations of Tribal Courts for reporting methods and recommendations and procedures for petitioning.

- Lack of sophisticated Tribal Court Personnel such as; trained court clerks, prosecutor's and guardian ad litem.

- Lack of Tribal Court commitments for treatment and rehabilitative measures for client's (we are often told that it is an infringement on their civil rights and due process is not being exercised properly, i.e., "Parent Rights", etc.

- Tribal Courts do not assert themselves with their power of authority to impose sentences or sanctions on perpetrator's as civil cases in their courts.

- Tribal Courts hesitate on emergency removal and placement order's because they are often pressured by politics in communities.

- Political Power is influenced by pressures by Tribal Governor's (who is a short-term administration of Tribes which often impedes on many ongoing services) and Tribal Councils therefore, not exercising proper separation of power's within the Tribal Court Systems.

- ICWA Notifications - are slow responses from tribes who impede in the transfer on ICWA cases back to tribes often resulting in termination of parental rights and jurisdiction.

- Inadequate funding for Tribal Courts under their present PL93-638 Contracts and lack of adequate monitoring for the operation of their programs.

- Lack of personnel to properly prepare legal court order's and/or petitions, consequently, BIA Social Services and PL93-638 Contract Social Worker's assumes that responsibility (a recent directive from our Albuquerque Area Office directed BIA Social Services to immediately cease this practice in providing written petitions,written court order's, and not to act as prosecutor's in CWA cases due to this not being a function of a Social Worker or its responsibility.

Local CPT:

- Need to re-establish local CPT Group (disorganized and dysfunctional) primarily being run by BIA Social

- Services (IHS has not followed through with agreement to coordinate meetings, etc.).

- Need to re-identify its role function i.e., primarily we should be functioning as an advisory group advocating our recommendations to our local Tribal Court Systems for actions on Protective Services cases.

- MOA's needs some revision and/or modification to meet the CPT responsibilities more realistically (lack of commitment and assertiveness on the part of members).

- Need to establish guidelines to present to our Eight Northern Tribal Council for their approval and sanction to operate as a recognized group.

- Need to screen members for re-grouping organization (currently, we have too many people and often new faces attend) for confidentiality purposes, we must comply.

IHS Barriers:

- Medical Examinations - are not being done properly which often lack specific information, such as; throat cultures usually not given, incomplete vaginal examinations, no reports on cultures for court proceedings, lack of coordination regarding investigations on alleged sexual abuse and incest cases.

- Mental Health - Psychological Evaluations contain vague information which is usually prepared from BIA Social Worker's Social Summaries or Home Studies submitted during a referral process. BIA and Tribes are often left out in decision making even when a child is under the supervision of BIA Social Services and legal custody of the Tribe. Most recently, i.e., we had a 16 year old girl in a group home placement, who was hospitalized after she threw a temper tantrum and lost control and group home staff was unable to calm her down, upon the conclusion and diagnosis by the mental health staff, it was decided that she be hospitalized for three years in a childrens psychiatric hospital without consulting with the tribe and BIA Social Services. Upon notification by the group home staff, BIA took a firm step against placement and this was ignored, however, at this point the Tribal Court took a firmer stand and IHS Mental Health was forced to adhere to the Tribal Court Order. After all the confusion, the 16 year old girl was referred for a 10-14 day evaluation. After she refused to go, the IHS psychologist refused to provide more services because the child had not gone for long-term inpatient psychiatric treatment as originally assessed.

- Breakdown in communication between BIA and IHS staff due to resistance by IHS staff.

- IHS Staff currently focusing on medical eligibility of SSI, medicare and medicaid, and Insurance Claims, etc. Currently, not providing clinical social work i.e., counselling with families and individual outreach services are not being provided adequately and only on a minimal basis.

- IHS needs to assume a more active role with sexual abuse cases and following through for investigative purposes as information they obtain may be pertinent to a case, present information is often too vague and minimal.

- IHS Social Services was recently involved in a sexual abuse case (alleged) where the child was placed in emergency shelter home placement. No medical examination was given during child's stay at IHS (child did not receive a medical examination until several days after, and only at the request of BIA Social Services. Rape Crisis was called in to interview child, no report as of this date as to the findings of the case. BIA asserted an impartial interview by an expert sexual abuse consultant as the expense of BIA. Also this resulted in BIA Social Services having to petition the Tribal Court civil case hearing which resulted in temporary removal from the child's home (alleged molester, child's stepfather). Recently, child was returned with natural father and stepmother whom she is living with at this time. The alleged perpetrator, her stepfather and natural mother were referred for Sexual Abuse Counselling with our local Parent United Group. No sentence was imposed, case still pending in the U. S. Attorney's Office for criminal prosecution.

- Sexually active young girls who request birth control pills or devices from the IHS Doctor's are advised that the best method of birth control is "abstinence" (imposing value standards).

HSD Barriers:

- Resistance by HSD in providing services to Indian client's.

- Resistance is based on jurisdictional issues and often want legal custody of Tribal children before they will accept a case.

- Resistance is often based on the lack of Tribal/State Agreements not being in place.

- Tribes are often regulated to adhere to the New Mexico

Consent Decree limiting foster care placements not to exceed the (18) month requirement regulating a permanency plan or termination of parental rights. Several months there was a meeting held between BIA, State, and Tribal Courts to resolve the issues which were to have been researched by the State Attorney's Office and the BIA Field Solicitor's Office for a legal opinion, as of this date we have not heard anything from both offices.

- State Social Worker's attitudes are usually racist, prejudicial, judgmental, punitive, and ignorant (lack of knowledge and understanding of Indian Culture).

Recommendations:

- BIA Social Services desperately needs another MSW on our staff so that we may continue to provide home based services adequately in Child Protection throughout the Eight Northern Pueblos area out of the Albuquerque Area.
- Increase in administrative monies in 2266 for more staff.
- Revisions in the current Quality Control Evaluation Instrument throughout the country.
- More Prevention and Home Based Programs in the Indian Communities focusing on keeping families intact and keeping children in school.
- Mandating Tribal Courts to have a Childrens Code and training in up-grading Tribal Court systems.

Submitted by,

Albanita Atencio
Albanita Atencio, MSW
Branch of Social Sciences
Northern Pueblos Agency

COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

IN RE ROBERT T.

No. H001759 (Ct. App. Cal., Apr. 21, 1988)

Summary

The California Court of Appeal holds that the failure to transfer a child custody proceeding to the Santo Domingo Tribal Court was justified by the application of the "good cause" exception of the Indian Child Welfare Act.

Full Text

Before AGLIANO, Presiding Judge, BRAUER and CAPACCIOLI, Judges

AGLIANO, Presiding Judge

Devon T. appeals from an order and judgment terminating parental rights to her son, Robert, under Civil Code § 232, subd. (a)(1) and (a)(7). Robert was born to 15-year-old Devon on April 27, 1981. Mauricio M. (aka Mauricio A.), Robert's father, is of Mexican-American descent. Devon is of American Indian and Eskimo descent; both Devon and Robert are enrolled members of the Santo Domingo Tribe. Robert is thus an "Indian child" within the meaning of 25 U.S.C. § 1903(4), and this case falls under the aegis of the Indian Child Welfare Act (Act), 25 U.S.C. § 1901 *et seq.*

Devon alleges that the court failed to comply with certain provisions of the Act. Specifically, she claims it erred in refusing to grant the Santo Domingo Tribe's petition to transfer jurisdiction of the proceedings to the tribal court (25 U.S.C. § 1911(b)), and that the court's placement of Robert with his foster-adoptive parents violated 25 U.S.C. § 1915. We find no error and affirm.

The judgment and order terminating appellant's parental rights, from which this appeal arises, was filed on April 3, 1986. A brief chronicle of the preceding five years is relevant to the issues on appeal.

Devon and Mauricio became involved in a common-law relationship in October 1979. This liaison, which never resulted in marriage, was to produce four children between April 1981 and September 1984. Social services had been provided both to Devon and to Robert's maternal grandmother, Vickie T., prior to Robert's birth, and Devon had been counseled on her need to complete her high school education. But after Robert's birth, although Devon agreed to improve her parenting skills and complete her education, she moved frequently and made little progress toward stabilizing her life.

At eight months, in December 1981, Robert was taken into protective custody after the police received a report that Mauricio had twice allowed him to fall from a car. A petition alleging that Robert came within the provisions of Welfare and Institutions Code § 300, subd. (a), based on Mauricio's abuse and on Devon's lack of support and housing, was filed on December 22. A combined jurisdictional and dispositional hearing was held on January 26, 1982. At the hearing, Devon admitted the allegations of the petition and Robert was made a dependent of the court. He was released to Devon's custody provided she live in the home of her father, that visitation by Mauricio be supervised and that the court be consulted prior to Devon and Robert's moving.

Devon moved with Robert without court approval on February 4, 1982, and for the next 11 months was apparently living on and off in the Fresno area with Mauricio. A Welfare

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On September 7, son,
Anthony T.

Despite the case , the
warrant was ordered view
hearing on December 9, 1982.

On December 15, 1982, Devon and Robert were the subject of a multidisciplinary team meeting which resulted in Robert's case being transferred to an American Indian social worker, Otto Trabue, on December 20, 1982. The team also recommended that the tribal council be notified of the dependency proceedings.

On January 18, 1983, Robert was placed in protective custody on the basis of the outstanding warrant. At the detention hearing on January 20, Robert was ordered placed in emergency foster care, and a jurisdictional hearing on the Welfare and Institutions Code § 387 petition was scheduled for February 9, 1983. Devon admitted the allegations of the supplemental petition at this hearing, and Robert was ordered to remain in foster care. Although the court considered transferring the case to Fresno County, Devon's residence there was never verified. On March 14, the court reaffirmed its previous orders.

On April 8, 1983, Robert was placed in a second foster home.

In a social report filed on May 19, 1983, Mr. Trabue informed the court that in accordance with 25 U.S.C. § 1912, he had notified the Santo Domingo Pueblo of the hearing originally scheduled for that date. In light of the continued instability of Devon's life, and of his concern for the quality of Devon's care for Anthony T., Mr. Trabue recommended that Robert be freed for adoption. At the June 2 hearing, the court reiterated its previous orders.

Mr. Trabue also notified the tribe of the scheduled August 4, 1983 permanency planning hearing. In his court report of the same date, he related that Devon was now pregnant with her third child. He also related his discussions with Vickie T. concerning the possibility of her providing a home for Robert. In light of her alcohol-related problems, poor physical health, lack of independent housing and inability to provide a home to Devon and another daughter, Mr. Trabue concluded that it would be unsuitable to consider placing Robert with his maternal grandmother. On August 4 the court ordered the initiation of parental termination proceedings to free Robert for adoption.

On September 7 Robert was placed back in his original foster home. This same month, Devon gave birth to a third son, Mauricio T.

On November 11, 1983, Robert was moved to a foster-adoptive placement with the Hs. They wish to adopt him.

The Welfare and Institutions Code § 366 dependency review hearing scheduled for January 12, 1984, was continued to January 19 to allow the tribe, which had been notified of the hearing on December 23 but had not received this notice until January 4, ten days to respond. On January 17 Mr. Trabue notified the court that Devon, then 17, was pregnant with her fourth child.

The June 11, 1984, court report indicated that Robert was thriving in his foster-adoptive placement. A long-term ear infection had been resolved, a speech delay appeared to have been overcome, and he was a happy, healthy three-year-old. Devon, with her three younger sons, was currently seeking her fourth housing situation since the previous hearing.

On November 5, 1984, a Civil Code § 232 petition was filed alleging that under subdivisions (a)(1) and (a)(7), Robert should be freed from parental custody and control. A Civil Code § 233 report was filed on December 13, 1984. Devon was then residing with her three other children, Anthony, Mauricio and Danny, born in September 1984, at Unity House, a temporary emergency housing facility for American Indian families. Devon had visited Robert five times since his placement in foster care in January 1983. The report recommended that the petition be granted.

At a hearing on December 21, 1984, Mauricio's parental rights were terminated under Civil Code § 232, subd. (a)(1), and the matter was continued to January 11, 1985, for tribal intervention on Devon's behalf.

Hearings on the termination petition were held on April 24, May 22, June 4, 5, and 6, July 11, 26, and 29, September 16 and 19, October 9 and November 3, 1985. On January 27, 1986, the trial court filed a 54-page statement of decision, granting intervention, denying the petition to transfer jurisdiction to the tribal court, and granting the termination petition. A judgment and order consistent with this decision was filed on April 3. This appeal followed.

As another appellate court has noted, "[t]he [Indian Child Welfare] Act was enacted 'to protect the best interests of Indian children and to promote the stability and security of Indian tribes and families by the establishment of minimum Federal standards for the removal of Indian children from their families and the placement of such children in foster or adoptive homes which will reflect the unique values of Indian culture, . . .' ([25 U.S.C.] § 1902.) The legislation was Congress' response to its findings that 'an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions; . . . .' ([25 U.S.C.] § 1901, subd. (4); (*see generally* Barsh, *The Indian Child Welfare Act of 1978: A Critical Analysis* (1980) 31 Hastings L.J. 1287; Note, *The Indian Child Welfare Act of 1978: Provisions and Policy* (1980) 25 San Diego L. Rev. 98.)." (*In re Junious M.*, 144 Cal. App. 3d 786, 789-90 [10 Indian L. Rep. 5088] (1983).)

As in *Junious M.*, *supra*, we are concerned here with subchapter I of the Act, which governs child custody proceedings. These are defined as proceedings for foster care placement, termination of parental rights, preadoptive placement, and adoptive placement. (25 U.S.C. § 1903(1).) A tribe has exclusive jurisdiction over child custody proceedings involving an Indian child who resides or is domiciled within its reservation. (25 U.S.C. § 1911(a).) For other Indian children who are the subject of child custody proceedings initiated in a state court, "the court, in the absence of good cause to the contrary, shall transfer such proceeding to the jurisdiction of the tribe." (25 U.S.C. § 1911(b).) Even for an Indian child who lives off the reservation, then, the tribal court is the preferred jurisdiction under the Act. But this preference can be overcome on a showing of "good cause."

Appellant first asks us to decide whether the state or the tribal court was the appropriate jurisdiction to decide whether Devon's parental rights to Robert should be terminated. To address this issue we turn, as did the trial court, to the definition of "good cause" for non-transfer contained in the Guidelines for State Courts; Indian Child Custody Proceedings, 44 Fed. Reg. 67584 *et seq.* (Nov. 26, 1979) (guidelines). Although the rule-making procedures of the Administrative Procedures Act were followed in developing these guidelines, they were not published as regulations because they were not intended to have binding legislative effect. (*Id.* at 67584.) The guidelines represent the Department of Interior's interpretation of the Act, however, and are a useful aid in interpreting its provisions. (*See, e.g.*, *Matter of J. L. H.*, 299 N.W.2d 812, 815 (S.D. 1980).) In denying the petition to transfer, the trial court relied on § C.3, subsec. (b)(i) and (iii) of the guidelines, which define good cause to include: "(i) The proceeding was at an advanced stage when the petition to transfer was received and the petitioner did not file the petition promptly after receiving notice of the hearing. . . . [¶] (iii) the evidence necessary to decide the case could not be adequately presented in the tribal court without undue hardship to the parties or the witnesses." (44 Fed. Reg., *supra*, at 67591.)

The introduction to the guidelines also notes that the legislative history of the Act "states explicitly that the use of the term 'good cause' was designed to provide state courts with flexibility in determining the disposition of a placement proceeding involving an Indian child. S. Rep. No. 95-597, 1st Sess. 17 (1977)." (*Id.* at 67584.)

Keeping these definitions in mind, we next review the record to determine whether substantial evidence supports the court's finding that good cause existed to deny the petition. (*In re Angelia P.*, 28 Cal. 3d 908, 924 (1981).)

As grounds for denying transfer, the court found that the tribe had failed to promptly file a petition to transfer upon receiving notice of the termination hearing. A review of the record reveals that the termination petition was filed on November 5, 1984. The tribe had notice of these proceedings in November 1984 and discussed the possibility of intervening in December. The case was continued from December 21 to January 11, 1985. A letter from the tribe filed on January 11 expressed its intention to intervene and to request custody of Robert, who would be placed with his maternal great aunt and uncle on the pueblo in long-term foster placement "until such time [as] a more permanen[t] plan is made and [the] child is freed for adoption." Appended was a tribal court order making Robert a temporary ward of that court until he became free for adoption. These documents were submitted to the trial court at the January 11 hearing and were treated as a request for tribal intervention and transfer of jurisdiction.

The case was then continued to February 22, 1985, to allow the tribe to file a petition for transfer. A petition for intervention, filed on February 22, 1985, appears in the dependency file. The case was continued to March 6 and then to April 24 for the first hearing. A transfer petition was filed on that day. At this juncture the court decided that it was too late to delay trial on the termination petition and, with all parties concurring, received evidence on the transfer issue as well as on the termination petition.

The trial court observed that there was a five-month delay between notice of the termination proceedings and the tribe's filing of the transfer petition and on this basis found "good cause." While we tend to agree that "good cause" existed on that ground, we note delay of greater magnitude. The tribe had been given notice of all hearings in the dependency proceedings since July 21, 1983, six months after Robert was first placed in foster care. Despite this, it did not intervene or petition for transfer in those proceedings and, as we have already noted, did not indicate its interest in any of the state court proceedings until a year and a half later.

Albanita Atencio, the tribe's director of social services, testified that in the summer of 1983, Vickie T. had called the tribe requesting its support in her effort to have Robert placed with her. The tribe then contacted Devon, who told tribe officials that she intended to follow through with a treatment program in order to be reunited with Robert. Mrs. Atencio then spoke to Mr. Trabue about Vickie's ability to assume custody of Robert. Mr. Trabue relayed his concerns about Vickie's ability to assume this responsibility, after which the tribe apparently decided not to intervene on her behalf.

Mr. Trabue testified he sent a letter to the tribe on September 12, 1984, together with copies of the dependency petition, the probation officer's initial report, Mr. Trabue's most recent court report, and the minute order directing the filing of a termination petition. In his letter, he indicated that the case plan was to free Robert for adoption, and that he was prepared to submit the necessary documents to county counsel to implement this plan. Following this, Mr. Trabue spoke to the lieutenant governor of the tribe by telephone, and also told him at that time that Robert was in foster placement. Only after the tribe was notified of a scheduled termination hearing in December 1984, and Devon's maternal aunt had expressed interest in having custody of Robert, however, did the tribe decide to intervene. Mrs. Atencio testified "that is the way we usually just, you know, operate our system, just that we don't intervene until someone, a parent or grandparent, asks us to intervene. And then we do try to intervene."

The tribe argues with some reason that since the purpose of dependency proceedings is to reunify parents and children, it was legitimate for it to assume that the end result of Robert's dependency would be reunification with his mother. This belief was apparently encouraged by Devon's report to Mrs. Atencio that she was cooperating with the reunification plan. If, however, as happened here, reunification efforts fail to successfully reunite a child with his or her parents within a year or 18 months (Welf. & Inst. Code § 361.5) a court must adopt a permanent plan for a child. (Section 366.25) If a child is likely to be adopted (section 366.25 subd. (d)(2)), that plan is usually to commence termination proceedings to free the child for adoption. In this case, the tribe was notified in July 1983 of the scheduled August 1983 permanency planning hearing concerning Robert, who had been a dependent of the court since January 1982, and in out-of-home placement since January 1983. Robert was not placed with his foster-adoptive family, nor were termination proceedings ordered commenced, until November 1983, three months after the hearing at which the court concluded that the reunification efforts of the preceding 19 months had failed.

The significance of this chronology is obvious: the tribe's intervention came too late. Its decision to intervene, and to petition to transfer jurisdiction, was based on the expressed desire of Robert's extended family members to have Robert placed with them on the pueblo. This option was not seriously explored until over a year after termination proceedings had commenced, a year in which Robert had bonded to his foster-adoptive family.

We believe a timely request to transfer jurisdiction, although this determination must be made on a case-by-case basis, should at least precede permanency planning in the dependency proceedings. If the permanent plan for the dependent child is that he or she be freed for adoption, the probation department will in all likelihood initiate a search for a preadoptive placement. And once in a placement which both child and foster-adoptive family expect to become permanent, a bond will form. Its breaking may well injure the child. (*See, e.g., in re Micah S.*, 198 Cal. App. 3d 557, 566 (1988) (Brauer, J. concurring).) Although the trial court cited language from the guidelines concerning the need for timeliness as a weapon against "disruption caused by negligence or obstructionist tactics on the part of counsel" (44 *Fed. Reg., supra*, at 67590) we believe the timeliness requirement reflects the Act's concern for the best interests of the Indian child. (25 U.S.C. § 1902.) While the tribal court is the preferred jurisdiction under the Act, the tribe cannot reasonably delay its request for transfer until after the child's adoptive family has been found. We therefore hold that the 16-month delay between the permanency planning hearing in August 1983 and the tribe's first expression of intent to intervene, in December 1984, was sufficient to establish "good cause" under the Act and the guidelines for the court to deny the transfer petition.

Matter of Adoption of Halloway, 732 P.2d 962 [14 Indian L. Rep. 5006] (Utah 1986) is inapposite. In that case, as in *Matter of Appeal in Pima County etc.*, 635 P.2d 187 [8 Indian L. Rep. 4054] (Ariz. 1981), *cert. denied sub nom. Catholic Social Services of Tucson v. Pima County*, 455 U.S. 1007 (1982) and *Matter of Adoption of Baby Child*, 700 P.2d 198 (N.M. 1985), the Indian child was born to a domiciliary of the reservation, and was subsequently removed to an adoptive placement outside the reservation. The issue in those cases was whether the child took the domicile of its mother so as to defeat the state court's assumption of jurisdiction. In all three cases, the state courts held that the child retained the domicile of its mother, and therefore the tribal court had exclusive jurisdiction, under 25 U.S.C. § 1911(a). The Utah Supreme Court, in *Halloway*, therefore voided the child's adoption. (*Id.* at 970.) The issue here is not, as in those cases, whether the state court's original assumption of jurisdiction was proper but whether, once having assumed jurisdiction, the state court was compelled to transfer jurisdiction to a tribal court. We hold, under the facts shown, that it was not.

We also hold that sufficient evidence supports the court's finding of "good cause" to deny transfer on the basis of subdivision (b)(iii) of the guidelines. The guidelines' comments on this subdivision reveal that it was included on the strength of the House Report on the Act (H.R. Rep. No. 95-1386, pp. 8, 21, *reprinted in* 1978 U.S. Code Cong. & Admin. News 7530) that 25 U.S.C. § 1911(b) "is intended to permit a State court to apply...a modified doctrine of *forum non conveniens*, in appropriate cases, to insure that the rights of the child as an Indian, the Indian parents or custodian, and the tribe are fully protected." (44 Fed. Reg., *supra*, at 67591; *see also Matter of Appeal in Pima County etc., supra*, 635 P.2d at 191.) The guidelines acknowledge that "Application of this criterion will tend to limit transfers to cases involving Indian children who do not live very far from the reservation." (44 Fed. Reg., *supra*, at 67591.)

The trial court, in citing this ground as good cause to deny the transfer petition, noted the fact that Robert had spent his life in or near Santa Clara County, that court, department of social services and probation department records were all located there, that social workers, probation officers, public health nurses, foster parents and Indian center staff members all worked there, that one expert witness resided in the county and the other two were closer to Santa Clara County than to the pueblo in New Mexico. Devon and her three younger children had lived in the San Jose or Fresno area until February 1985, when they moved to the reservation. Robert's maternal grandparents, who had participated in the dependency proceedings, were also residents of Santa Clara County. The only New Mexico witness testifying in these proceedings was Mrs. Atencio. The court also noted that in such a complex case, proximity of the court to the numerous records and witnesses in the proceedings had been of great assistance in facilitating the presentation of evidence. These are all pertinent and adequate reasons to deny transfer on the basis of subdivision (b)(iii) of the guidelines. (*See In re Interest of Bird Head*, 331 N.W.2d 785, 790 [10 Indian L. Rep. 5050] (Neb. 1983); *In Interest of J.R.H.*, 358 N.W.2d 311, 317 (Iowa 1984).) We are therefore satisfied that substantial evidence supports the trial court's finding of "good cause" to deny transfer on the ground that the state court forum provided the better opportunity for the production of valuable evidence.

The trial court denied the transfer petition on the additional ground that it would injure Robert's best interests. Appellant argues that this was not appropriate under the Act. We disagree. The stated purpose of the Act, as we have already noted, is to "protect the best interests of Indian children." (25 U.S.C. § 1902.) We are satisfied that this is a pertinent and indeed a necessary consideration in deciding whether to grant or deny a transfer request. (*Matter of M.E.M.*, 635 P.2d 1313, 1317 [8 Indian L. Rep. 4075] (Mont. 1981).) Both the petitioner's expert witness and the expert witness for the tribe reported that Robert was strongly bonded to his foster-adoptive family, and that he perceived them as his psychological family. Both also opined that it would be psychologically injurious to remove Robert from this setting. The only evidence presented to rebut this testimony was that of Devon's expert witness, Evelyn Blanchard. She testified that Robert would not be irreparably harmed by a move to the reservation. This witness, however, had never met Robert or his foster-adoptive family, and based her opinion solely on a home visit with Devon's extended family on the pueblo in New Mexico. The court noted that the other two experts were far more persuasive in assessing the harm which might befall Robert were he to be removed from his psychological family. The weight and credibility to be accorded the witnesses' testimony are matters for the trial court. (*Nestle v. City of Santa Monica*, 6 Cal. 3d 920, 925 (1972); *In re Marriage of Slivka*, 183 Cal. App. 3d 159, 162 (1986).) We thus agree that the court properly considered Robert's best interests in denying transfer.

Devon's second claim of error concerns Robert's placement with his foster-adoptive family, the Hs. She argues that this placement violated 25 U.S.C. § 1915, and that the court was obligated to compare the fitness of Robert's foster-adoptive parents to that of his maternal aunt and uncle, the Ts, who wished Robert to live with them on the pueblo in New Mexico.

We find this argument to be without merit. 25 U.S.C. § 1915 states: "(a) Adoptive placements; preferences [¶] In any adoptive placement of an Indian child under State law, a preference shall be given, in the absence of good cause to the contrary, to a placement with (1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families. [¶] (b) Foster care or preadoptive placements; criteria; preferences [¶] Any child accepted for foster care or preadoptive placement shall be placed in the least restrictive setting which most approximates a family and in which his special needs, if any, may be met. The child shall also be placed within reasonable proximity to his or her home, taking into account any special needs of the child. In any foster care or preadoptive placement a preference shall be given, in the absence of good cause to the contrary, to a placement with [¶] (i) a member of the Indian child's extended family; [¶] (ii) a foster home licensed, approved, or specified by the Indian child's tribe; [¶] (iii) an Indian foster home licensed or approved by an authorized non-Indian licensing authority; . . ."

We first note that until this appeal is final, Robert is not freed for adoption. His placement with the Hs therefore does not come under the aegis of 25 U.S.C. § 1915(a). This placement was a preadoptive placement and therefore comes only under the auspices of 25 U.S.C. § 1915(b). But this placement was not made by the court below, but by the juvenile court during the course of the underlying dependency proceedings. Civil Code § 232 *et seq.* provides no authority for a court hearing a termination petition to place or to review either a foster or a preadoptive placement for a dependent child. The juvenile court's jurisdiction over Robert continued while the termination petition was pending, and will presumably not terminate until this appeal is final and an adoption decree is filed. Any complaint Devon may have concerning the propriety of Robert's placement with the Hs should therefore be made to the juvenile court. Since Devon has not appealed from the juvenile court order, any issue concerning the propriety of Robert's placement with his foster-adoptive family is not properly before this court.

We are constrained, however, in view of the expression of these concerns, to make the following observations.

Mr. Trabue, the American Indian social worker assigned to Devon's case in December 1982, testified that he was aware of the dictates of the Act concerning placement of Indian children with their family members or in an Indian foster home. In March and April 1983, however, Devon did not know her tribal affiliation. Sometime in March Mr. Trabue was provided by Roberta Kipp of the San Jose Indian Center with a certificate indicating that Vickie T. was a member of the Santo Domingo Pueblo, and that Devon's father, Frederick T., was an Alaskan Indian or Eskimo. In May 1983, therefore, Mr. Trabue contacted Mrs. Atencio, the Santo Domingo tribe's social worker, and she mentioned that there were relatives on the pueblo. Mr. Trabue had considered placing Robert with his maternal grandmother, Vickie T., but decided against this because of her own problems. He then requested referrals for Indian foster families from the department of social services, from the San Jose Indian Center and from a social worker in Alameda County. He also placed an advertisement for an Indian foster family in a San Jose newspaper. Robert's foster-adoptive parents responded to this advertisement. Mrs. H is part Pima Indian; Mr. H is part Miwok. Mrs. H testified that at the time the ad appeared, she and her husband were considering adopting a child, and followed up on the ad because they were of Indian heritage, and Robert needed an Indian family. In the meantime, Mr. Trabue confirmed Robert's status as an Indian child with the Bureau of Indian Affairs and was provided his tribal affiliations and the contact persons for the respective tribes.

Thus, from the spring of 1983 until February 1985, while Devon was living either in the San Jose or the Fresno area (most of the time out of touch with her social workers), neither she, nor her parents, nor the tribe provided Mr. Trabue with any possible alternative placements within the family for Robert. Mr. Trabue complied with both the letter and the spirit of the Act when he searched out an Indian family within the immediate geographical area who could provide a permanent adoptive home for Robert. Indeed, placing Robert in foster care or preadoptive placement with extended family members on the pueblo before February 1985, when Devon moved there, would have violated 25 U.S.C. § 1915(b)'s directive to place a child in proximity to his or her home.

Had the tribe offered the Ts as a placement alternative when the juvenile court was considering and implementing a permanent plan for Robert, the court would have been afforded a reasonable opportunity to evaluate this placement for Robert. Offering it after Robert had already lived for over a year with his new family, however, would again have presented the risk of detriment to Robert from severing an established familial bond.

The trial court pointed out in its statement of decision that the Hs are "actively involved in a life which includes and builds upon the Indian culture that each of them comes from. The[y] are also devoted to Robert's best interests. They recognize that he has Santo Domingo ties, and they have indicated an intention to insure that he visits with the Tribe and his family there as he grows up. It is an ideal situation for Robert. He will be able to remain with the family he is bonded to while learning about Indian culture not only from the [Hs] but also from contacts with the Tribe and his relatives the[re]. . . . [¶] It is clear to this Court that Robert is not being robbed of his cultural heritage, nor will this action be devastating to him in his later development. [Citing Irving N. Berlin, M.D., *Anglo Adoptions of Native Americans: Repercussions in Adolescence*, American Academy of Child Psychiatry 387, 388 (1978).) Instead, he will be provided stability now when he so desperately needs it and cultural experience from now through his adolescence so that a future identity crisis can be avoided." We are gratified to approve a decision which allows Robert to become a permanent member of a happy and secure family, while ensuring that he has the means to cultivate and live his Indian heritage.

The judgment and order are affirmed.

Counsel for appellant: Frieda Jo Owings, Vallejo, California

Counsel for petitioner: Donald L. Clark, County Counsel, Diane L. Bennett, Deputy County Counsel, San Jose, California

Guardian ad Litem: Robert J. Masterson, Deputy Dist. Att'ys Office, San Jose, California

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SOUTH DAKOTA SUPREME COURT

IN THE MATTER OF B.J.E., C.J.E., K.J.E., & T.J.E.

No. 15757-a-RAM (S.D. Sup. Ct., Apr. 27, 1988)

Summary

The South Dakota Supreme Court holds that the trial court substantially complied with the provisions of the Indian Child Welfare Act, and therefore, that the court has jurisdiction to terminate the parental rights of D.J.E.

Full Text

Before MILLER, Justice

MILLER, Justice

This is an appeal in which D.J.E. (mother) appeals the termination of her parental rights over her four children (B.J.E., C.J.E., K.J.E., and T.J.E.). Father's parental rights were previously terminated. He is not a party to this appeal. We hold that the trial court substantially complied with the provisions of the Indian Child Welfare Act (ICWA), and therefore it had jurisdiction to act in this case.

Mother has raised six issues on appeal (among them the adequacy of expert testimony, admissibility of certain exhibits, sufficiency of the evidence to support the allegations of the petition and whether termination of parental rights was the least restrictive alternative). We have thoroughly and carefully considered each issue and conclude that all but one are totally without merit. Thus, those issues are affirmed on the basis of settled law, no abuse of discretion and clearly sufficient evidence to support the findings.

In the remaining issue, mother challenges the jurisdiction of the trial court over the child T.J.E. (who was born subsequent to the filing of the dependency and neglect petition) claiming that the mandatory notice requirements of the ICWA were not met. This presents us with a new, novel, and serious issue.

Facts

Mother and the children are Indians and presumably enrolled in the Rosebud Sioux Tribe (tribe). The record is devoid of any evidence that they are enrolled members of tribe; however, that issue is not argued or disputed.

At the time of the filing of the dependency and neglect petition, T.J.E. was not yet born nor was the Department of Social Services (DSS) aware of her pregnancy. Therefore, the petition named only the three older children.

It is clear from the record that the appropriate notice[1] required by the ICWA (25 U.S.C.A. § 1912(a)),[2] was given to tribe. This notice was dated June 17, 1985. On July 1, 1985, tribe acknowledged receipt of the notice and also filed a motion for continuance and a request to produce and examine. On July 24, a letter was written to the circuit court judge from a Rosebud Tribal Court Judge indicating that tribe declined intervention but reserved the right to intervene at a later date. The tribe was also given notice of the temporary custody proceeding.

In a report to the circuit court dated January 6, 1986, DSS requested that the unborn child be added to the petition as DSS felt that the well-being of the unborn child was jeopardized by mother's drinking. In a motion and order for custody during pendency of the proceedings, dated February 3, 1986, the "Unborn Child" is specifically referred to.

A notice of the adjudicatory hearing was filed with the circuit court on May 13, 1986. T.J.E. (who was born on February 17, 1986) was specifically named as one of the children in that notice. A certified mail return receipt, date of delivery 5/13/86, addressed to tribe, was filed with the circuit court.

On June 24, 1986, tribe's Indian Child Welfare Advocate (advocate) sent a letter to the circuit judge stating that their office would work with mother until the next circuit court hearing scheduled for July 24, 1986. Advocate indicated that she planned to attend that hearing. Advocate also indicated that if mother complied with the stipulations of the case plan that they had set up for her, the tribal court would then decide whether to transfer the case back to it.

An amended petition for dependency and neglect was filed on July 17, 1986, wherein T.J.E. is once again specifically named. There is no return receipt of notice to tribe for this amended petition.

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[1] The notice specifically stated in part "you are herewith notified that the ultimate action may conclude in foster care or termination of parental rights involving the above-named child[ren]. Under the Indian Child Welfare Act, you have ten (10) days from receipt of this notification to request that jurisdiction of this matter be transferred to your Court, or to request an extension of time to investigate this matter further. . . ."

[2] 25 U.S.C.A. § 1912(a) provides:

> In any involuntary proceeding in a State court, where the court knows or has reason to know that an Indian child is involved, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall notify the parent or Indian custodian and the Indian child's tribe, by registered mail with return receipt requested, of the pending proceedings and of their right of intervention. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, such notice shall be given to the Secretary in like manner, who shall have fifteen days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe. No foster care placement or termination of parental rights proceeding shall be held until at least ten days after receipt of notice by the parent or Indian custodian and the tribe or the Secretary: *Provided*, That the parent or Indian custodian or the tribe shall, upon request, be granted up to twenty additional days to prepare for such proceeding.

PREPARED STATEMENT BY DAVID BREAULT,MSW, AND KENNETH HODDER,ACSW, SEXUAL ABUSE CONSULTANTS AND CLINICIANS

2/22/89

Thankyou, Mr. Chairman, for allowing us to express our concerns before this committee. We have been providing treatment and consultation services in the aftermath of the sexual abuse perpetrated by John Boone on the Hopi Reservation. Our services began on October 19, 1987. We have been going to the Reservation for two days every other week since then. We are both clinical social workers at the University of New Mexico School of Medicine, Programs for Children, and in private practice where we have extensive experience in working with sexual abuse victims, their families and perpetrators.

Our primary activities with the Hopis have included treating children and families in homes and schools, professional laison in the formation and support of self-help groups, providing consultation and training to the Hopi Guidance Center, Polacca Day School, Hopi High School, Children's Court counselors and other community agencies. We provide services to many other sex abuse victims in addition to the ones associated with the Boone case.

Based on our experiences in working with this situation we have a series of recommendations regarding the need for treatment services and agency responsiveness.

A. Need for Treatment Services

1. There is immediate need for increased sex abuse treatment staff at Hopi. Our involvement was designed to get the treatment and recovery process started until more staff was hired. We cannot even come close to meeting the legitimate demand for services. By normal clinical standards we are significantly undertreating most families. The intensity and complexity of the problems require much more frequent contact. For example, we have a case of a Boone victim who has been discovered abusing a younger sibling. This boy is depressed and suicidal. He needs counseling twice a week right now. His sibling is traumatized and needs intensive treatment as do his other family members. Our seeing them every other week for one session is not sufficient. If the present course proceeds the IHS, the BIA and the Hopi Tribe will debate territorial issues for several more years and this family and many others will not recieve the services they need. There needs to be some kind of joint powers agreement arrived at quickly which creates funding and staff immediately.

More and more families are requesting services. This is ironically a positive and expected development in any community. As abuse gets reported and taken seriously, other types of abuse get reported also. As more community members learn more about recovery they become increasingly effective at helping others to seek help.

2. Treatment services need to be provided on a community ownership model. Prevention is still the best medicine. Treatment programs need to emphasize formation of self-help groups and training of community members to fill as many professional positions as possible. Professionals who are hired need to have experience along these lines. Long term target goals need to be set for when outside professional involvement becomes less necessary as local effective responses to the problem increase.

3. There is a need to develop a plan for assessment and treatment of juvenile and adult offenders. Most people who experience sexual abuse do not become sexual abusers but there is definitely a higher level of risk that they will. We still have only provided treatment for a small percentage of Mr. Boone's victims. We must be prepared with a range of services to respond quickly if and when juvenile offenses do occur. There is also a serious problem on the Reservation with adult offenders who have committed rape and incest receiving brief sentences, receiving no treatment in prison and then being returned to the community at the same or higher risk of committing further abuses. We need to expand the treatment possibilities for offenders both on and off the Reservation. We certainly need to create legal remedies that restrict their access to victims. We are working with a 15 year old girl who is an incest victim of her uncle who was charged and sentenced for that offense. Within a few months the perpetrator, who was untreated, was returned to the community and was living across the street from the victim.

B. Need for Improved Agency Response

1. In federal agencies such as the BIA and IHS there should be specially trained administrators in child abuse and child advocacy who become involved temporarily in crisis situations to educate permanent administrators and catalyze steps toward recovery. This is necessary because the impact of sexual abuse disclosure, especially with mass victim incidents is multi-dimensional. Agency administrators are vulnerable to the same emotional reactions of blaming, denial, minimization and withdrawal as are victims, family members and perpetrators. The most frequent feelings we have found in family members at Hopi have been shock, embarrassment, shame, confusion and feelings of self-blame and responsibility; and typical reactions those same people have in response to the feelings are denial, blaming, anger, depression, withdrawal, and resistance. The child victims are often withdrawn, inexpressive and frequently depressed with different types of accompanying behavior problems such as deteriorating school performance, social isolation and/or social conflict, substance abuse, aggres-

sive behaviors, soiling of pants, refusal to dress for gym, etc. Many parents feel angry and distrustful of school personnel and express helplessness in knowing how to talk to their children about what happened to them. The parent support group at Polacca and the more recent one at Hotevilla are incredibly important because they help parents feel destigmatized, and gives them greater understanding of their confusing emotions and empowers them to want to help other families as they help their own.

As was mentioned previously school personnel and administrators suffer similar emotional reactions as community members especially in small rural communities. At Hopi, senior administrators and school and community agency personnel have children who were abused. As expected these people too are immobilized by the trauma. The pervasiveness of the abuse undermined the very structure reasonably expected to remedy it. As victimized families sought relief the unresponsiveness of the system compounded the victimization. An analogy would be expecting some of the survivors of a plane crash to be responsible for carrying out the investigation into the crash and implementing treatment for other survivors.

An example which illustrates the dilemma has to do with the principal and the school where the abuse by Mr. Boone took place. This principalship is an incredibly strategic position in terms of healing the wounds of abuse by expediting delivery of mental health services to child victims and by promoting positive interaction between parents and teachers through education and positive involvement of the school board. When we began working with the situation the level of fear, suspiciousness and hostility between school personnel and parents was very high. The principal who was there when Boone was arrested had died; a new one had to be found. The person who was then hired turned out to have a severe alcoholism problem and through the resulting predictable ineffectiveness the process of recovery for community and school was very significantly delayed. Why was a person with this level of impairment hired at such a crucial time in such a key position? I can only assume that the people who hired and the administrators above them did not understand the importance of the position and were caught in the need to deny and minimize the problem. I think a specialized administrator trained in child abuse/advocacy could have helped to avoid such harmful delays.

2. Agencies must have active and effective employee assistance programs. The most common dual problem with sex abuse issues that we find in families at Hopi is substance abuse. Agencies cannot combat community substance abuse problems if they are not actively managing there own impaired employees. The great danger is that substance abuse problems will occur vertically in the agency structure. The agency is at

risk for denying the community problems and not hiring people who will be effective in working with the problems.

3. Agencies must have a high priority and actual track record of effective interagency coordination. There needs to be federal oversight of child protection teams to make sure that agencies are in fact coordinating and substantiating data that child abuse reports are in fact being investigated properly and followed up on. Lack of such coordination has clearly been a problem at Hopi.

4. IHS must have the necessary mandate and funding to follow through on mental health/child abuse issues. We have a case of an adolescent boy who has severely sexually abused a much younger boy. The adolescent boy has committed several other violent acts and has been reported by an IHS physician to be suicidal. He has also been extremely resistive to treatment; we have made many unsuccessful attempts to work with him. Now after months of interagency teaming we have a court order requiring that the boy be placed at a facility where he can get help on sex abuse issues, a facility to send him to, and finally, a willingness on the part of the boy to go. What we don't have is IHS funding to send him to the placement. Apparently mental health related placements such as this do not receive nearly the funding priority that medically related placements do. If this is the problem, I can only reiterate that this child is at very high risk to abuse other children as well as himself.

5. It is necessary for agencies to identify settings and situations that may allow abuse to develop. An example of one such setting might be the dormitory at Keams Canyon. It is necessary in possible high risk settings for the responsible agency to investigate and implement remedies if indicated, before lightening strikes.

SUMMARY OF RECOMMENDATIONS

1. The provision of professional treatment works with child sexual abuse expertise.

2. Support for these workers for a significant period of time (3-5 years).

3. Development of a comprehensive child protection system from reporting to investigation (by professionals with expertise in investigating child sexual abuse including the various developmental constraints on victims) through prosecution, to offender treatment.

4. The aggressive monitoring of child sexual abuse allegations by the Child Protection Team.

5. Routine referral of all child sex abuse cases to the federal system given the short sentences possible at tribal level and poor record of compliance sex offender treatment without court orders.

6. Treatment services for offenders (who often times return to the community).

7. Prevention programs in the schools. Including regular staff in-services on signs and symptoms and reporting procedures.

8. Broader efforts to treat alcoholism, on the reservation, which is highly correlated with sexual abuse.

U.S. Department of Justice

Office of Justice Programs
Office for Victims of Crime

STATEMENT
FOR THE RECORD

JANE NADY BURNLEY, Ph.D.
DIRECTOR
OFFICE FOR VICTIMS OF CRIME
OFFICE OF JUSTICE PROGRAMS
U.S. DEPARTMENT OF JUSTICE
PREPARED FOR
SPECIAL COMMITTEE ON INVESTIGATIONS
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
WASHINGTON, D.C.
FEBRUARY 22, 1989

Mr. Chairman and Members of the Committee:

My name is Jane Nady Burnley. I am the Director of the Office for Victims of Crime (OVC) which is located within the Office of Justice Programs, U.S. Department of Justice. I have served in that capacity since late April 1987. I am pleased to have the opportunity to discuss the activities of the Office for Victims of Crime as they relate to the needs of child sexual abuse victims in Indian country.

The Office for Victims of Crime serves as the Federal focal point for crime victims issues. We have responsibility for administering the Victims of Crime Act (VOCA) which became law in 1984 and was reauthorized in 1988. VOCA authorized the creation of the Crime Victims Fund which is made up of Federal criminal fines, penalties and bond forfeitures. Collections began in 1985 and to date have totaled more than $330,000,000. Last year's collections totaled approximately $94.5 million; funds collected last year are currently available for grants in this Fiscal Year. At present, there is a legislated cap of $125 million on the amount of money that can be deposited into the Fund to carry out the purposes of the Act. All Funds collected above this amount are deposited in the General Treasury.

Approximately 95% of the Crime Victims Fund monies are awarded in grants to states for victim assistance and victim compensation programs. Victim assistance funds support a variety of community-based service programs which include rape crisis programs, child abuse treatment programs, battered women shelters, victim-witness programs and other services for victims of violent crimes. Victim compensation grants are awarded to approximately 42 state operated eligible programs which compensate victims for the financial losses which are incurred as a result of a crime. These losses typically include medical expenses, lost wages, funeral expenses, and mental health counseling expenses. Up to $10 million of the Crime Victims Fund is available to support the provisions of the Children's Justice Act. One percent of the Crime Victims Fund is available to provide services for victims of Federal crimes and provide training and technical assistance for eligible victim assistance programs across the country. Thus, this year less than $1 million from the funds collected in FY 1988 will be available for services to victims of Federal crimes. This amount has been modestly increased by recent amendments to the Children's Justice Act which permit OVC to use 15% of the Children's Justice Act funds to improve the handling of child sexual abuses cases in Indian country. Thus, in FY 1989 an additional $631,000 will be available for child sexual abuse victims in Indian country.

The Office for Victims of Crime became involved in services for child sexual abuse victims in Indian country early in 1987.

Shortly after the investigation was begun into the John Boone case on the Hopi reservation, Jan Emmerich, the Victim Witness Coordinator for the Arizona U.S. Attorney's office, became aware that there were as many as 140 potential child sexual abuse victims on the Hopi reservation involved in this one case. This was brought to the attention of the Victims Office when we received a request from Steve McNamee, the Arizona U.S. Attorney, for funds to support emergency consultation throughout the conduct of the investigation. Child sexual abuse experts were brought in to assist in interviewing the children and they also provided training to professionals on the reservation regarding these kinds of cases.

The thorough investigation and handling of the case resulted in a guilty plea by Boone and he was sentenced in early June. However, it soon became apparent that while Boone was no longer a threat to the community, the Hopi community had an enormous need for education, consultation with professionals and treatment for the child victims and their families. Mrs. Emmerich and I visited the Hopi in May and met with the Child Abuse Task Team, school teachers, counselors and families of the victimized boys. The urgent need for treatment was almost overwhelming.

Our Office worked with the U.S. Attorney's office and with other

Federal agencies (Bureau of Indian Affairs and Indian Health Service) throughout the summer in an attempt to assist in arranging for treatment for these victims. However, by fall it became apparent that no funding source for treatment was forthcoming. Therefore, our Office decided to identify and fund professionals to provide treatment. We worked with the Victim-Witness Coordinator in the U.S. Attorney's office to arrange for 2 therapists to be available in the Hopi community 4 days per month for a period of several months. I am pleased that you will be hearing from David Breault and Ken Hodder, the therapists, during this hearing. Our goal in doing this was to provide short term emergency treatment funds so that these children and their families would have a place to turn. We were not attempting to usurp the role of other agencies which have a responsibility for ongoing services on reservations. Instead, we made it clear to the Indian Health Service and the Bureau of Indian Affairs that our funding would consist of short term treatment of approximately six months which would enable other agencies to gather resources to support longer term treatment.

Our involvement in the Hopi case marked the first time that the Crime Victims Fund was used to support treatment for crime victims in Indian country. A short time later, we received another request from the U.S. Attorney in Arizona for additional expertise in consultation in another multiple victim case on the

Navajo reservation, and we responded with funding for that case which involved more than 200 child sexual abuse victims.

Our experience with these and other cases in Arizona which came to our attention convinced us that there was a clear and pressing need for emergency services for victims of these crimes. Again and again it was apparent that victims of violent crimes do not have access to victim assistance services which are available in many communities. Large numbers of child sexual abuse victims were receiving no treatment at all, months after disclosure of the abuse and even prosecution.

In response to these and other cases which came to our attention, in 1988 our office decided that the development of victim assistance programs on Indian reservations would be the highest priority for the use of that portion of the Fund which is set aside for services to victims of Federal crime. As a result, we have initiated a number of activities which have enabled us to be responsive to some of these needs.

Last year, OVC established a special fund totaling $250,000 which was set aside to provide emergency assistance and services to victims of Federal crimes. The money is made available to the U.S. Attorneys' offices to meet emergency situations in which victims involved in Federal prosecutions need services which are unavailable through any other source. We tapped that fund in March 1988 for the first time to provide approximately three months of therapy to approximately 20 elementary school girls who were victims of child sexual abuse at the Rocky Ford School on the Pine Ridge Indian reservation. Nancy Stoner Lampy, the Victim-Witness Coordinator in the U.S. Attorney's office for the District of South Dakota, worked with local service providers to arrange for treatment for the children involved in this case. Our funding supported the initiation of the treatment, and it is our understanding that local service providers supported extended treatment for any of the victims who needed it.

We have also used this money to support training and consultation for parents and school staff on the Navajo reservation in a community which was affected by a large child sexual abuse case and to support a similar effort on the Cheyenne River Sioux reservation in Eagle Butte, South Dakota. In addition, we have supported treatment for pre-school child sexual abuse victims who were enrolled in a daycare center on the Colorado River Indian reservation.

In all, OVC has expended more than $100,000 for treatment of Native American child sexual abuse victims and their families.

Because of the profound lack of service for crime victims in Indian country, last year the Office for Victims of Crime announced a new discretionary grant program which will fund the development of victim assistance services in Indian country. Early in this fiscal year, approximately $1 million was awarded in grants to nine state victim assistance agencies. The amount of awards ranged from $35,500 to $250,500. Arizona was awarded $250,500 and South Dakota was awarded $195,500. Other states receiving grants were Wisconsin, Michigan, North Dakota, Washington, Wyoming, Utah, and Oregon.

These state victim assistance agencies will make subgrant awards to Indian tribes or organizations on reservations to support the development of a variety of victim assistance services. It is our hope that these new victim assistance programs will become part of the network of victim assistance programs throughout each of the states. It is clear that due to the geographic remoteness of many of the Indian reservations, victims of crime have little or no access to victim assistance services which are needed. It is not our intention to create a separate service system for victims of Federal crimes. Instead, it is our hope that through the availability of this earmarked money, Native Americans will have improved access to much needed victim assistance programs in their communities.

Because the interest and need for these grant funds exceeded the funds available in the first grant program, our office will soon announce an additional $700,000 to be available to those state victim assistance programs which did not receive awards in last year's grant program. In this way we hope that funding will be available to support the development and expansion of victim assistance services on reservations in other states. It is anticipated that OVC will be able to provide a second year of funding to these victim assistance grants.

Consistent with VOCA, a portion of the funds to benefit Federal crime victims have been used to support training for Federal staff who have significant responsibilities for meeting the needs of crime victims. Activities in this area have included training conferences for Victim-Witness Coordinators in the U.S. Attorneys offices and training for Assistant U.S. Attorneys and Federal law enforcement officials. Of particular interest to the Committee would be training that our Office has supported on the effective investigation and prosecution of child sexual abuse cases. In this training we have supported the team approach which is needed in these cases. We have provided funding for teams of professionals - a Victim-Witness Coordinator, a Federal investigator (e.g., FBI or BIA), and a prosecutor - to attend a special training conference held in conjunction with the Child Sexual Abuse Symposium co-sponsored by the National Children's Advocacy Center in Huntsville, Alabama and our Office.

Another major activity of our Office which will be of interest to the Committee was our co-sponsorship of the first national training conference for Native Americans on victims of crime. The Conference, entitled Indian Nations: Justice For Victims of Crime, took place in Rapid City, South Dakota on November 15-17, 1988. OVC co-sponsored the Conference along with the South Dakota Coalition Against Sexual Assault and Domestic Violence. We were especially pleased that over 450 people participated in the Conference; they included representatives from approximately 75 tribes from across United States, victim advocates, service providers, criminal justice professionals and State and Federal officials. Several workshops were held during the Conference on investigation and prosecution of child sexual abuse as well as treatment responses. This marked the first national effort of its kind and OVC plans to sponsor a second conference later this fall.

One final area of activity for the Victims Office that may be of interest to the Committee concerns victim compensation. Our

Office has initiated an extensive effort to increase the awareness of victim compensation programs among Native American victims of crime who live on reservations. Victim compensation programs which are operated by states have proved to be a major source of funding for medical and mental health expenses which are incurred by victims as a result of a crime. Our experience has shown over the last year and a half that Native American victims who live on reservations are generally not aware that victim compensation programs exist and that they may be eligible to apply for compensation. This has occurred despite the fact that eligible state compensation programs which receive Federal matching funds must compensate victims of Federal crimes on the same basis that they compensate victims of state crimes. We have undertaken efforts to raise the level of awareness among Native Americans in Indian country that compensation programs exist and the kinds of reimbursement that might be available through such programs. Under a grant from our Office, The National Association of Crime Victim Compensation Boards has undertaken outreach activities to improve this situation. Increasing awareness of the availability of these programs is extremely important as they have become a major source of funding for child sexual abuse treatment throughout the states.

In summary, the Office for Victims of Crime has initiated a number of activities to respond to the needs of crime victims in Indian country. We initially became involved because of a number of multiple victim child sexual abuse cases in Arizona and South Dakota. Our efforts have included the support of emergency treatment services and the initiation of a grant program to fund the development of victim assistance services for child abuse victims and other victims of crime on reservations. These activities have grown and developed over nearly two years. However, it will be another year or two before the results of these various activities will be apparent and Native American crime victims have improved access to victim assistance programs in their own communities in Indian country. We, in the Office for Victims of Crime, are committed to this effort and we will continue to make assisting victims of Federal crime a high priority for our Office.

Thank you very much.

THE EASTERN BAND OF CHEROKEE INDIANS

Juvenile Intake Services - P.O. Box 455, Cherokee, N.C. 28719
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February 22, 1989

TESTIMONY FOR THE SPECIAL COMMITTE OF THE
SENATE SELECT COMMITEE ON INDIAN AFFAIRS

Mr. Chairman, and other members of the Senate Select
Committee on Indian Affairs,

My name is Roxanne Howard. I'd like to express my appreciation for the opportunity to testify today before your Special Committee. I trust my words will be helpful in giving the Committee insight into some of the issues regarding sexual abuse on Indian reservations. I will be particularly be discussing our issues and problems in Cherokee from a service providers view point.

Before addressing the issues, I'd like to give you some information about myself. I am a member of the Washoe tribe in California. I have six years of education and experience in the field of Social Work. I hold a bachelor's degree in Social Work from Ferrum College in Virginia, and a Masters degree in Social Work from Florida State University. Last year, I participated on the National Oversight Committee on Child Protection while I was employed with the Bureau of Indian Affairs, Social Service office here in Washington, D.C. The experience I got at BIA Social Services has given me a unique view of of how programs, Federal, State, and Tribal, can enhance and impede one another. I'm presently serving on several committee's: the Cherokee Tribal Coordinating Committee on Chemical Dependency, the Cherokee Children's Code Committee, and the Western North Carolina, Region A Child and Youth Planning Council. My professional and educational interests are focused on Child Welfare issues and programs.

Presently, I 'm working for the Eastern Band of Cherokee Indians in North Carolina, as a Juvenile Intake/Court Counselor.

My job involves the preliminary screening and evaluations of Compliants alleging a juvenile to be delinquent or undisciplined. I am responsible for probation and after-care services to juveniles on probation, protective supervision, or conditional release. I evaluate the alleged delinquent or undisciplined juveniles needs to determine if those needs cas be adequately met through mediation and/or counseling in the (1) Intake Screening process, (2) referral to community resources, or (3) through formally filing a Juvenile Petition for court action services. Our Code defines a juvenile as: any person who is less than sixteen years of age is not married, emancipated or a member of the armed services of the United States. As of our November 1988 tribal enrollment cencus, we have approximantly 2078 juveniles, ages 0-15, out of a total population of 6918 members living on the reservation.

Child sexual abuse is occurring in a much more alarming frequency than we are presently addressing. Law enforcement, child protective services, and medical professionals are doing what they can to protect victims and the community. Though, the treatment of sexual offenders needs to be a crime control effort which focuses on the management and control of the abusive behavior. We need to be working with the victims and offenders in treatment, especially the juvenile victims and offenders, as soon as the problem can be identified. The Cherokee reservation doesn't have therapeutic treatment services specifically designed to treat sexually abused victims, or juvenile/adult offenders. We have several cases pending court action, and the offenders and victims are still living within the reservation boundary. Some of the victims are seeking counseling services off the reservation, if the can afford treatment. We presently have one sexual abuse therapist who works primarily with sexually abused victims. Last year she worked on approximately 30-40 sexually abused victims, and maintains approximately 20 cases., Some of the victims have a tendency to emotionally withdraw from therapy and terminate counseling services. The sexual abuse therapist works off the reservation.

One mother told me her daughter withdrew from counseling because she couldn't bear to talk about the sexual abuse. This child like many others had been interviewed a multitude of times during the investigation by adults from different agencies with overlapping needs: child protection services, law enforcement, special agents from the Federal Bureau of Investigations, and sexual abuse therapists. By the time the child got into treatment, she was severely traumatized.

Smokey Mountain Mental Health is currently providing evaluation and outpatient services for sexually abused victims and sexual offenders. These specialized services are offered on a fee for service basis. Many of our Cherokee families are unable to afford these services. I am aware of five juvenile sex offenders, who haven't been prosecuted and are living on the reservation who could benefit from these services. One of Smokey Mountain Mental Health's conditions for treatment of sexual offenders is that they require the individual to be court ordered into treatment. We're still waiting for cases to be prosecuted.

One of our problems which is perhaps even more disturbing is that an unknown number of sexuul abuse cases never reach the attention of the proper authorities. A large percentage of child sexual abuse incidences are not being reported. It has only been in the past four to five years that our Department of Social Services has seen an acceleration in child sexual abuse reports. Even if the child story is believed, parents, teachers, health, and social service professionals have been reluctant to seek the aid of enforcement agencies.

The cases that are filed with the police or the FBI may not result in prosecutionfor a variety of reasons. First, the tribal justice system in cherokee operates under the provisions of Title 25 of the Code of Federal Regulations. Sexual offenses involving members of the Eastern Band of Cherokee Indians fall within the Major Crimes Act, giving jurisdiction to federal courts to prosecute felony cases, occurring on the reservation. It is here where we experience the greatest amount of time lapse. The time it takes a reported case of child sexual abuse to be investigated and prosecuted is taking years. To effectively treat the victim of sexual abuse and the offenders, we need to be able to get these cases prosecuted. Problems that slow down the proesction process are due to: insufficient evidence, an unwillingness of the victims, families and community members to expose the child and family victims to additional trauma, or that the child victim is viewed as being a unreliable witness. Consequently, the case may become a matter of the child's word against the adult or juvenile offenders.

Case continuances are too freely being granted. This is weakening therapeutic efforts to treat sexually abuse victims and sexual offenders. It also puts the victim and the victims family through a tremendous amount of stress and anguish. We have a case in Cherokee where the 13 year old, female victim of a gang rape, involving three juvenile offenders is presently living across the road from her perpetrators. The investigation was completed about one year ago, and was given to the United States Attorney for prosecution approximately eight months ago. This case is still waiting prosecution. All three of the offenders have remained in the community, and are receiving no outpatient treatment. I spoke to the mother of the victim recently. She tells me her family has been tormented during the past ear: peeping toms, vandalism, writing on their house, teased by the alleged perpetrators, and receiving piercing stares. There is nothing they can do. The family has never been told if and when their case will be brought to federal court. Everyday they have a need for a sense of security.

It is my understanding that the prosecuting United States Attorney has one to five years to prosecute. If the offender aren't prosecuted within five years, the Statute of Limitation takes affect. The victims and the victims families will never get any relief.

I'd like to site a statement written by a mental health professional who has ten years of experience working with juvenile and adult offenders. "Since sexual offenders are an involuntary treatment population involved in criminal behavior, effective intervention on an outpatient basis most often requires a judicial mandate that is administered as a condition of probation or parole. Outpatient treatment can be initiated, and mandated at a time of dispositional sentencing or immediately following release from incarceration or other residential setting." I feel the numbers of child sexual abuse will definitely increase as more cases are prosecuted, and more services are established to treat sexual abuse victims and offenders. Nonintervention with juvenile and adult sexual offenders is a public safety issue. There needs to be some clarification of the implications of not holding sexual offenders accountable for harmful sexual behaviors.

I myself would be very interested in obtaining training in the treatment of outpatient sexually abused victims as well as establishing treatment programs for sexual offenders. I'm going to need further training to be effective. This is going to require additional monies for training and implementation of services. It's going to take interagency coordination to govern all the phases of intervention, from the initial disclosure to long-term monitoring of the juvenile and adult offenders.

In Cherokee we suffer the consequences of federal jurisdiction. Our hands are tied when it comes to providing services to the sexual offenders. We have to be careful about any intervention with offenders so that we don't interfere with federal investigations or prosecution. We could change the sexual offender with a lesser charge, Assualt and Battery foreinstance, but it really doesn't address the real issue of Sexual Abuse.

Child sexual abuse problems have just begun to surface in Indian communities. We are facing a lack of staff, facilities and funding to effectively tackle the problem, which indicates technical flaws in state, federal, and tribal criminal codes, making it difficult to prosecute adult and juvenile offenders of such offenses. I think we owe it to our children and families to protect them from future harm.

SPECIAL COMMITTEE ON INVESTIGATIONS
OF
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Submitted by

William A. Thorne, Jr.

February 22, 1989

INTRODUCTION

Child victimization is present in all strata of our communities but is more readily discovered where public agencies have extended contact with families, i.e., schools, welfare workers, public clinics, etc. Unfortunately, no segment of our society has been immune from this tragedy. Indian reservations and communities are no exception. Child abuse within Indian communities has recently (within the last couple of years) attracted growing attention. The effects of the problems are magnified in communities mired in high unemployment and poverty. Lacking the necessary resources to properly deal with the human tragedy of child abuse, its victims and the community as a whole suffer.

When dealing with child abuse on Indian reservations, though, it must be kept in mind that there are no easy answers. There is not one generic Indian community or culture nor is there a generic type, cause, or remedy for child abuse in Indian communities. There are over three hundred different tribes, each having unique characteristics of culture, size, proximity to urban areas, as well as differences in economic situations, political configuration and degrees of acculturation. There is not going to be one answer that will be effective for all Indian tribes. Each tribe will have to determine its own needs and create solutions that will be effective in its own situation. There are, however, some generalizations that can be drawn from apparent similarities. These generalizations, like all generalizations, are inherently limited in their usefulness.

The thoughts, comments and suggestions which follow are not intended to be a systematic examination of the problem, nor a model solution. Rather, it is intended to be a view from one judge's bench as to where problems may lie within the system itself as well as a presentation for discussion of directions in which to search for solutions. Other than as specifically detailed, these observations should not be attributed to other tribal judges.

DON'T FORGET ABOUT THE VICTIMS

Too often in the heat of passions, justifiably outraged sensibilities, in the rush to deal with the problem of child abuse on Indian reservations, the natural inclination is to focus upon the identification and criminal prosecution of the perpetrators. This is certainly a laudable goal and does need attention, but it should not be the primary focus. The legal system focuses upon the prosecution and punishment of perpetrators. Anything that stands in the way of a criminal prosecution is too often pushed aside. Unfortunately, that includes the needs of the victims.

I urge you, instead, to focus upon the victims and become cognizant of their needs, which are many and sometimes quite varied. The goals of court intervention must be properly weighed and balanced. Without a clear conception of the purpose of intervention, a tragic situation is made even worse. Our first duty must be to the children. After we have satisfied that obligation, then it may be appropriate to turn to the question of criminal punishment.

The goals of intervention by the legal system into an abusive situation within a family, an institution, or a community must be prioritized. The first goal should be the elimination of harm to the child. The second objective should be the repair of the harm which has already been done to the child. The third task must be the mitigation of future harm resulting from the past abusive conduct. The last priority should be the punishment of the perpetrator.

I realize that this is a somewhat controversial scheme of priorities when viewed in the abstract. Application in actual situations, however, may be more acceptable than first glance may suggest. If a criminal prosecution can be accomplished without inordinately jeopardizing the first three priorities, then there is no reason the prosecution should not go forward. That decision, however, must be made in light of its affect upon the first three.

Let me give an example. It is not at all unusual for serious cases of child abuse occurring within an Indian reservation to be brought to the attention of the Federal Bureau of Investigation (FBI). If they decide to intervene or assume the lead role in the investigation, they often notify other agencies. The result of such notification is that other agencies generally withdraw from the investigation, and may even withdraw from the case as a whole. On several reservations, the quickest response once the FBI has assumed the lead in investigating a case of child abuse has been six months. During that intervening waiting period between identification of a problem and the compilation of enough evidence to file a criminal charge, almost everything else is on 'hold.' This has resulted on some reservations with no action being taken regarding a case for as long as eighteen months, at which time a federal criminal charge is finally filed. In a murder investigation, or an inquiry into stock fraud or a bank robbery, this wait may not do serious harm and may in some ways be beneficial for the justice system. In a child abuse case, however, this is intolerable.

Total lack of communication between criminal investigators and child protective agencies on some reservations is not unusual. In several instances, this has resulted in failure to remove the victim from the abusive situation, thereby running the risk of further abuse. This has been the product of 'turf' concerns about allowing other agencies into an ongoing investigations, as well as simple failure to coordinate or even notify juvenile court or another authority that might intervene on behalf of the victim. Additionally, child protective workers on some Indian reservations are reluctant to 'interfere' with an on-going criminal investigation, particularly a federal investigation, for fear of running afoul of a law themselves.

The manner in which the criminal investigation is carried out may also add additional trauma to young victims. Special care needs to be taken when interviewing victims of child abuse, particularly sexual abuse victims. I know several excellent federal investigators (from both the BIA and FBI) who have dealt with abuse on reservations but unfortunately they appear to be the exceptions. I am personally aware of several incidents where pre-teen age incest victims, for whom English is a second language, were taken and 'interrogated' by large, unsympathetic, anglo FBI agents who returned them to their home only after they accused their father or other relative of incest. Not only is it absurd to return the victim to the home unsupervised and unprotected if incest has actually occurred, but the interview was apparently conducted with the subtlely of SWAT team exercise. We now demand that police officers whose responsibility is to interview rape victims have specialized training. Are child victims entitled to less?

Once a criminal charge has been filed, it is usually several more months before the case is concluded in court. During this time, the mental health services and victim counseling are often withheld from the child so as not to 'taint' the child's testimony. This results in anguish so that the ends of the criminal justice system can be met. This is absolutely backwards from the way it should be. The system should instead be concerned with assisting the victim, not incurring an even higher level of suffering. It is critical that therapeutic intervention be promptly available and properly done to limit the long-term harm to the victim.

During the course of the criminal trial, the victim may need to testify. At the trial, the defendant has an attorney protecting his/her interests and the government has an attorney pursuing a conviction. Their roles demand that each be an aggressive advocate for their position. The victim, however, is left defenseless and once again subject to the demands of adults who have their own agenda to pursue. From the victim's perspective, is this so much different in quality than the prior incidents of abuse by adults? I believe that these victims are entitled to help so that they are not then re-victimized, this time by the 'justice' system.

The victim also incurs an additional penalty when a family member is prosecuted. During a criminal prosecution, family tensions are elevated. In the course of choosing sides, the victim may be left without any kind of family support system whatsoever. Family dynamics within an abusive situation are extremely complicated and often times fragile. The pressure of a criminal prosecution and the very real possibility of jail or prison for the perpetrator may be too much for the family to cope with, particularly without specialized support services.

I have, unfortunately, witnessed cases where criminal prosecutions resulted in the break up of entire families. In one instance, an eleven year old victim simply wanted the sexual abuse to stop when she finally reported what her father was doing. The 'system,' however, had other things in store for her. Instead of 'just making it stop,' criminal charges were filed. Within a matter of weeks she had a mother who had developed an acute drinking problem and literally ran away from her problems (and her children) when she couldn't face the situation, a father who was prevented from obtaining sole custody by virtue of his abusive conduct, siblings who were now in several different homes (no one was willing to accept all the children together), and no place she could call home. There was no one for her to trust and no one who would unconditionally love here the way that families must. She developed problems with several different foster home placements and eventually ran away just as her mother had. This victim had asked for help and instead, from her viewpoint, the 'system' destroyed her by taking away from her what little she had of value before the so-called protective intervention occurred.

There is also another often unseen price that may be paid by victims when a familial member is jailed because of abusive conduct. The family standard of living often drops dramatically and when holidays, such as Christmas, roll around, the victims may be subtlety and not so subtlety reminded that 'daddy' is not home because of 'you.' We as adults, know that the victim is not responsible; the abuser is the one responsible. But try telling that to a young victim or his/her brothers and sisters. The presence of a family member in jail compounds the guilt that the victim may have already heaped upon himself or herself.

Criminal prosecutions are by nature open proceedings where the public and local media have access to all the tragic details. For the victim, that often means acute embarrassment and guilt as both the actions of friends and stares of strangers remind the victim that there is no privacy for them in a small community.

Finally, a criminal conviction is not a solution to the problem of familial abuse. If the perpetrator is placed in prison, the victim may achieve a temporary respite from abuse. But, sooner or late, the perpetrator will be released from prison. Absent some unusually effective treatment and therapy in prison, an abuser, particularly a sexual abuser, will return to the community with the same problem that initiated the abuse originally. It may even have been aggravated. The highest incidence of sexual abusers re-offenders appears to be after five years. Who protects the victim, or younger siblings, when the family member comes home from prison?

I am not arguing against all criminal prosecutions. In some instances, criminal prosecutions are an absolute necessity. In other cases it might be one of several options or combinations of options, such as where reluctant offenders are leveraged into treatment through the coercive nature of the criminal process. In many cases, however, I believe that an automatic initiation of criminal sanctions simply allows the 'system' to re-victimize the child victim. Certainly not something to be proud of or feel self-righteous about. _If_ criminal prosecutions are to be instituted in child abuse cases, they must be conducted by

trained professionals who have a keen sensitivity to the overriding needs of the victims.

RECOMMENDATIONS IF CRIMINAL PROSECUTIONS ARE WARRANTED

1. Investigatory efforts must be coordinated with child protective services, both social welfare agencies and juvenile courts, so that the necessary services and supervision are available to protect the child from the possibility of on-going harm. The standards for acting in a child protection proceeding in juvenile court are necessarily different from those required for a criminal prosecution. Action to protect the child should not await the gathering of sufficient evidence to support a finding of guilt beyond a reasonable doubt.
2. The individualized needs of a particular victim must be assessed by specially trained personnel to determine whether a criminal prosecution is consistent with the on-going needs of the victim. The treatment needs of a victim are often acute and are most effective when delivered promptly. The victim should not have to defer alleviation of pain in the interest of a criminal prosecution.
3. Investigators and prosecutors must be trained and sensitized to the needs and the fears of young victims. Untrained investigators and prosecutors, although well meaning, may cause additional harm to the victims.
4. A guardian ad litem/court appointed special advocate (GAL/CASA) should be appointed to assist, represent and protect

the victim throughout the criminal court process. This person must be independent, trained and assertive enough to protect the child from needlessly repetitive and insensitive interviews, prepare and protect the child as much as possible in the trial process, insure that necessary services are available on a timely basis to the victim, assess whether the victim will be traumatized by testifying in court and finding methods to limit such trauma, and finally, be able to argue the child's interest in a sentencing hearing in the event of a criminal conviction.

5. Time limits must be strictly observed or a suitable explanation should be presented to a court to insure that victims and juvenile agencies are not left in limbo. I can personally certify that it is extremely frustrating for a juvenile judge to set up a comprehensive treatment program for the victim, offender and entire family only to see it evaporate when a criminal prosecution is later initiated in federal court. All voluntary cooperation and sharing of common objectives disappears once a criminal case is initiated.

RESPONSE TO ABUSE

In order to structure and implement the appropriate response to abusive situations, it is first necessary to discover the abuse. The most widespread methods upon which intervention depends are mandatory reporting laws. All fifty states have mandatory reporting laws. These are not entirely effective, but they are a start. Generally these laws require anyone with reason to believe that a child has been abused to report the episode to responsible authorities who will then follow up as necessary. There are ongoing discussions about whether different classes of people should be exempt from such reporting laws and even where applicable, they are often honored in the breach. The failure is often occasioned by a reluctance to get personally involved in reporting, notwithstanding the fact that child abuse is universally condemned. Non-reporting also occurs when people are unsure of whether they have witnessed a sign of actual abuse or whether they might be mistaken, as well as a general reluctance to interfere in another's family.

These same concerns and problems limit the reporting of child abuse within Indian reservations. There are, however, several additional factors present on reservations that limit the effectiveness of mandatory reporting. Until these are corrected, or clarified, mandatory reporting of abuse within Indian reservations will have limited impact.

First, the statutory problems must be overcome. While all 50 states have mandatory reporting laws of one form or another, relatively few tribes have implemented similar laws. Even were tribes to implement such laws, though, a large class of people consider themselves exempt from tribal laws. When acting as a tribal judge dealing with child abuse cases, as well as other matters, it was not unusual to encounter federal employees who believed that they were exempted from application of tribal laws to the extent that they were performing their duties as federal employees. This included reporting abuse cases as well as appearing pursuant to a subpoena as witnesses and for jury duty. While the vast majority of federal employees appear willing or eager to comply with local laws, there is enough ambiguity that some consider themselves bound by tribal laws only when convenient for themselves. These hearings should clarify the legal authority. Federal employees, as well as others, must be put on notice that they are bound by tribal laws when properly enacted. This would then allow tribes to enact mandatory reporting laws for the entire community within the reservation, not just a portion of the population.

Another problem that surfaces from time to time is the reluctance of Indian Health Services (IHS) personnel to release information, much less make a voluntary report, related to child abuse. To illustrate the problem, let me give an example from my own experience as a tribal judge. I ordered the physical examination of a pre-teenage girl who had reported physical and sexual abuse to a caseworker. IHS performed the exam and then refused to release the information and findings back to the court without the consent of the parent. The parent in this instance was one of the suspected perpetrators of the abuse. The doctor believed that both the claim of doctor-patient confidentiality and the federal 'Privacy Act' precluded his release of the information. I ultimately took the matter to an Assistant U.S. Attorney I had tried cases against on prior occasions. IHS personnel were informed that they would be federally prosecuted under the Assimilative Crimes Act and the state mandatory reporting provision if they failed to deliver the results of the child's exam. Within a day or two we received the reports.

The 'word' from the U.S. Attorney's office clarified things on that reservation and with that particular doctor for the time being. But as recently as this month, I've been told by another tribal judge in another state that she cannot get IHS to release information pertaining to an alleged child abuse, again citing the 'Privacy Act.' It should not be necessary to waste time, energy, and professional talents in these kinds of struggles. There must be an unambiguous pronouncement indicating that not only are tribal courts entitled to subpoena medical records related to child abuse but also that IHS, and other federal employees, are not exempt from mandatory reporting laws. They must also be instructed that they should disclose otherwise confidential information for appropriate purposes such as child protection team utilization, criminal investigatory purposes, foster care placement assessment, victim treatment, etc.

In addition to mandatory reporting laws, voluntary reporting of abuse within reservations must be made easier for children, parents, and others with valuable information. All reports of abuse within a given reservation should be coordinated through one particular office so that an uncoordinated division of authority does not allow cases to 'slip between the cracks' due to confusion about which person or agency is involved and what is being done. Anonymous reporting should be available. The entire community, not just the professional staffs of different agencies, need to be informed that the standard for reporting should be a 'reasonable suspicion' of child abuse, not absolute confirmation. Efforts to accomplish each of these in the past have met with varying degrees of success on different reservations.

The lack of a coordinated effort and clear responsibility has been one of the more difficult problems to overcome. A multitude of agencies may be involved in different cases of reported abuse thereby making it difficult to assign clear case responsibility. On various reservations you may find any (or all?) of these agencies involved within child abuse cases: BIA, Tribal, state (possibly more than one state), and IHS social service agencies; tribal, IHS, state or county mental health outreach or case workers; private or IHS doctors and medical staffs; specialized private providers; and tribal, county, state, BIA, and federal law enforcement agencies and court staffs. Without clear and timely case management it is often difficult to pull together (assuming they are willing) the cooperative efforts of different agencies so that the proper resources are directed to each case. Too often no one takes charge of a case while assuming that someone else is following the case closely. Or an agency that is, in fact, handling the matter doesn't have sufficient resources alone to properly deal with the problem. Resources with which to respond to child abuse on Indian reservations are already too scarce, without wasting them further due to agency squabbles or simple lack of coordination.

AVAILABLE RESOURCES

The level of resources available to deal with the problem of abused children, as well as the various sources, varies greatly from one reservation to another. In contacting four different tribal judges, one from the plains, one from the west, and two from the intermountain area, each of whom are responsible for dealing with the problems of child abuse, I found four different levels and sources of services currently available.

On one reservation with a population of approximately 2,500, the judge complains that there are virtually no resources available. There is one IHS caseworker/counselor available who does mainly family counseling. A contract psychiatrist/psychologist is available on the reservation for six hours per month. The BIA social worker is reported to have no training in working with children and the judge has been trying to raise enough money to send the workers to specialized training programs. IHS has contracted mental health to the tribe but within the contract it imposes IHS restrictions upon release of information. It consequently has been extremely difficult to gather information for court proceedings because of perceived restrictions of the 'Privacy Act.' There is currently no functioning Child Protection Team on the reservation. Apparently very little training has been provided to earlier CPT members who consequently believed that this function was to simply ratify whatever actions the caseworker decided were appropriate. The state reluctantly provides some services through Title IV foster care money. Services other than an offer to train volunteer guardian ad litems have not been forthcoming from the state. There is no G.A.L./C.A.S.A. program available due to the unavailability of-even minimal funds to reimburse gas expenses to travel, a significant problem given the extremely high unemployment rate. There is no emergency shelter care available for older (12+ years) children, who must be housed at the tribal jail when emergency removal from the home is necessary. The tribe is not allowed access to a state juvenile facility minutes away. (What kind of a message are we giving when we have victims in jail!)

The Bureau of Indian Affairs has reported to that court that they have no funds to pay for treatment of abuse victims in specialized programs. IHS on that reservation allows a maximum of forty-five days treatment at a facility for purposes of treating alcohol or drug abuse problems. The court has therefore relied upon Medicaid money to fund three to six months of treatment at a private psychiatric hospital, as a last hope. This private facility is utilized despite the fact that the treatment may not be appropriate and despite the fact that the psychiatric 'labels' may follow the child for the rest of his or her life. The theory is that something is better than nothing. Is it? The state has indicated that it is willing to provide services to the victims only if the tribe is willing to surrender complete jurisdiction. The community is apparently unwilling to turn their children over to the state as a result of prior 'horror stories' where children were lost within the system and returned to the reservation as adults, with problems far worse than when they left.

On a second reservation, the judge reports that tribal and state social workers seem to be working well together, although the state will not provide specialized services unless the child is relinquished by the tribal court. If there are no services available to the tribal court, it does relinquish jurisdiction and then attempt to serve in a consulting role when the state staffs the particular case. B.I.A. casework is reported as being undependable, sometimes excellent -- other times vastly inferior to the reports of state caseworkers. The court staff reports difficulty getting reports from IHS because of their concern for the 'Privacy Act.' The tribal mental health program which operates under a contract from IHS also is reluctant to release information, again because of the 'Privacy Act,' even when the original referral for evaluation came from the court. The Child Protection Team for the reservation is reported as meeting so infrequently that the court staff and Tribal Police have begun discussions to initiate their own protection team. (Staff from both the court and the tribal police have sought out and received some specialized training in dealing with child abuse.) Social services and mental health are reported as having no one trained to deal with reports or to verify sexual abuse.

There appears to be very little communication between the courts and law enforcement on the one hand and social services on the other. The court has just recently received a home study from a reservation in another state indicating that BIA social services have placed a young child in the home of a woman who has, within the last couple of years, had her own children removed as a result of child abuse.

The tribal judge from a third area expressed a great deal of frustration with the bureaucratic nature of services offered by federal agencies. His perception is that 50 to 60% of BIA caseworker time is spent in preparation and writing of reports required by area and national offices. He also believes that the priorities of the BIA caseworkers are out of line. He perceives their priority as to children to be: first, preparation of paper work; second, family counseling; and then a focus upon curfew and truancy problems. They seem to avoid the difficult issues of abuse. He attributes the poor response to a combination of lack of experience and a desire to move onto better jobs elsewhere as soon as they do obtain the required experience. He also notes that the IHS Service Unit Director sets priorities independent of the tribal court's needs assessments. The two IHS caseworkers/social psychologists do good work, but have very little coordination with related social service agencies. Tribal workers are perceived in a similar vein. The judge attributes this to the fact that their contracts from the BIA and IHS require that they submit the same paperwork requirements as if they were federal workers.

In contrast, there seems to be an excellent working relationship with state social services. The tribal court has arranged for state workers to attend specialized child abuse programs dealing with Indian communities, in addition to their own training in the field of child victimization. The judge was unable to get the BIA and IHS staff to attend those same programs, however. The state social workers provide emergency foster placements for the court as well as some counseling, pursuant to an informal agreement between the court and the state director. The state has previously supplied start up money for a juvenile services coordinator (for which the original money ran out when the BIA/IHS/Tribe did not continue the funding). The state has even indicated that they would supply a caseworker to the reservation if office space on the reservation could be found. Response to tribal court needs was deemed excellent by state social service workers but poor by BIA and IHS personnel.

There are currently no services available to victims or offenders in this rural area. Victims must be transported off the reservation and into town for what services are available. The judge believes that if better services and treatment were available on the reservation, there would be more cases reported and more voluntary requests for help from families. He believes that the community suffers because of the limited response to the cases that have been reported. The judge is disheartened at the prospect of ever getting the services and resources that the victims need. He has noticed that in times of "tight budgets" services in the field are reduced, and in times of "expanding budgets" administrative positions are added. In his view, the children lose both ways.

On a fourth reservation the tribe has contracted with the BIA for the provision of social services. This proved to be a big disappointment. The workers seemed more concerned with meetings, travel and administrative budgets, and generating reports for funding sources. In the past, an IHS psychologist had worked extremely well with the tribal courts in terms of evaluation and treatment. Several years ago, however, he was transferred and has not been replaced. The only active casework being done within this reservation is provided by the state social services agencies. For several years now, the state has had an informal agreement with the tribal juvenile court to provide services to the court and the children on the reservation. State caseworkers appear in tribal juvenile court, as well as file petitions in the tribal juvenile court, in the same manner as they do state juvenile courts. The state has undertaken to provide to the tribe the same services that they would provide to a state juvenile court. This is especially amazing since that particular state and tribe have a history of battling each other in the court systems over almost every issue. They have, however, chosen not to fight over the children. There is even a written agreement in place allowing the tribal juvenile court access to the state juvenile correctional programs on the same basis as state juvenile courts at no cost to the tribe. There is an additional provision that the tribal juvenile court may withdraw any child from state custody when it deems that it is appropriate (a provision not available to state juvenile judges). Every general and specialized service that is available in the surrounding rural part of the state is available to the tribal children. When something more is necessary, they are transported to urban areas.

The Child Protection Team for the reservation is reported as operating well, after some initial difficulty coordinating with the tribal juvenile court. Coordination with the U.S. Attorney for the state has also improved significantly with two prosecutions for child abuse currently being handled. The most troubling problem for this judge has been the lack of clear responsibility between the tribe and the BIA as to who will head a particular criminal investigation. Each apparently claims the investigation and then 'drops the ball'. Six months is reported as the norm between beginning and concluding an investigation because other types of criminal cases appear and are then given priority. The judge indicates that the schools are doing well at reporting suspicions of abuse. The judge is worried, however, that the Head Start program has never filed a report of suspected child abuse, despite the fact that several children within the Head Start program have been referred as victims through other sources.

RESOURCE RECOMMENDATIONS

1. Multi-disciplinary inter-agency teams must be created from within the resources already present on each reservation. These teams should not be required to follow a national table of organization (such as standard military tables), and they must include more than just IHS and BIA personnel. They should include the obvious additions of law enforcement and juvenile court personnel, school and pre-school personnel, child development specialists, as well as the less obvious additions of state agency representation and parent/victim representation. These teams need to be provided with a continuing flow of new and developing resource alternatives that are being tried elsewhere in the country so that they can evaluate possible effectiveness in their own community. These teams should not be dominated by social workers, investigators nor court personnel. Every substantiated case of abuse should be timely staffed with the team and its input provided to caseworkers, investigators, prosecutors and juvenile judges. Periodic reviews of on-going interventions should also be conducted by the teams. If a criminal prosecution is appropriate and a conviction occurs, the recommendations and observations of the team should also be provided to the sentencing judge.

2. Conflicts in reporting paths need to be corrected. While initial reports should be accepted by any related agency, the primary responsibility for follow up and verification should

rest with specific people. All reported cases should be coordinated. It is a waste of resources and a disservice to the victims 'when the right hand doesn't know what the left is doing.' Special reporting paths and review mechanisms should be established so that, in the event of conflict of interest by one of the normal persons within the reporting/evaluation paths, an alternative timely route is available.

3. All reports need to be followed up by trained specialists. Standard police or social work procedures are insufficient to deal with the sensitivity and timeliness necessary to protect and assist victims.

4. Peer review mechanisms should be periodically instituted among caseworkers dealing with child abuse victims and offenders. These should include review panelists outside the specific agency of the worker. They should include BIA, IHS, tribal, state, and private workers, as well as input from the allied agencies with which they must cooperate.

5. In-service training must be given to caseworkers to equip them to deal the special problems and special needs of physically, emotionally and sexually abused children.

6. Specialized training needs to be provided to teachers and other adults who work with children so that they will recognize not for the physical, but also the behavioral, indicators of abuse.

7. Reporting laws need to be clarified, publicized and enforced vigorously. All persons, possibly excepting legal

counsel for a specific defendant, need to be made subject to the reporting requirements. Professionals need to be informed of the potential for personal liability, as well as criminal liability, to which they are exposed for failure to report.

8. Ambiguities about the 'Privacy Act' need to be removed so that responsible agencies are given access to information necessary to protect victims. The information should also be available to therapists and workers charged with the on-going treatment of victims.

9. A protocol should be developed by each multi-disciplinary team with tribal and federal law enforcement and prosecutors so that each case investigated for criminal prosecution is timely concluded, thoroughly reviewed for prosecution, and expeditiously concluded. Such an agreement will avoid a host of problems.

10. A guardian ad litem or court appointed special advocate program should be initiated or co-sponsored by each community. The G.A.L./C.A.S.A. should be appointed for each child where there is strong evidence of abuse. The G.A.L./C.A.S.A. role would be to insure that the 'system' timely and properly meets the needs of each victim. The G.A.L./C.A.S.A. should have legal standing to seek protective orders, as well as advocate on behalf of the victim in all legal proceedings pertaining to the above situation.

11. A consulting pool or panel of specialists in each area of the country should be established to provide technical help

and special assistance with the extraordinary case when it occurs. Mechanisms should be established so that these specialists can, in a cost efficient manner, review a case, where appropriate diagnose a situation, recommend a treatment, and testify if necessary in follow up hearings. Reviews of files, photos, test results can be made without travel expense and time. Technology ranging from simple speaker phones to satellite communications could be utilized to provide insight at team staffings, or special testimony in court proceedings, avoiding the difficulty of arranging travel schedules.

12. Training and information must be provided to children in elementary as well as secondary schools concerning the problems of child abuse. Such training will allow kids to evaluate improper demands or actions of adults as well as providing them with an avenue to seek assistance when needed. Empowering the children to fight abuse themselves can be a powerful tool.

13. Information on model programs being demonstrated elsewhere in the country should be provide to each community. Information should be provided - not compliance required with some model program. Each community must evaluate its own needs and a particular program's benefits before attempting to implement a program from somewhere else. A mechanism should be established to share the knowledge and experience, both good and bad, with other communities.

14. Presently available resources must be provided to Indian communities to deal with the spectra of child abuse. Currently, states are counting Indian children for purposes of qualifying for federal money. Relatively few are providing services to reservation children in any significant manner. States and tribes can work successfully together. It has been done. It should be the general rule, not the exception.

15. New resources need to be developed to fight child abuse within Indian Country. These resources should provide maximum services in the field, not add to an administrative overhead. One method (probably very controversial) would be to allocate direct funding to individual tribes who then might purchase additional specialized services from states or private providers. (Before the money should be allocated to states, however, a mechanism should be available to insure that tribes are already getting a fair allocation of resources in this area from the state.) The money should be restricted to providing additional services, not supplanting already existing services by transferring budget categories administratively. A purchase of specific services may be a method of avoiding some of the administrative overhead problem.

16. New priorities should be established for BIA and IHS personnel prioritizing the prevention, identification, and treatment of child victims. Administrative busy work should be reduced so that qualified people are providing services, not

spending a large percentage of their time filling in data cards and writing administrative reports.

17. Tribal contracting of BIA and IHS services should not carry the same burdensome paperwork as if the service were not contracted at all. In some places, with relatively small staffs, the same number of reports appears to be generated as is required of larger programs where full or part time administrators take the burden off the service providers. Administrative details should account for a smaller percentage of overall employee hours.

18. Incentives and rewards should be provided to effective service providers, not just those capable of bureaucratic survival.

TESTIMONY OF EIDELL B. WASSERMAN, Ph.D. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS FEBRUARY 22, 1989

I would like to begin by commending Chairman McCain and DeConcini for their continued interest and support of Indian children. I would also like to extend my personal appreciation to two Committee staffers: Dan Lewis for his work on behalf of following up on funding possibilities for our project and Mary Lou Soller for her assistance in helping the Hopi mothers, who recently testified before you, to feel as comfortable as possible. Finally, I'd like to thank the Committee for your sensitivity to the mothers' emotional well-being and the overall fine treatment they received from the Committee and your staff. I am please to have the opportunity to be here today.

During the parents' testimony you heard first hand of the anguish and devastation they are still experiencing: two years after Mr. Boone was arrested, decades after their own abuse. Let me add some observations. There are many continuing psychological problems for Mr. Boone's victims, their families, and the community as a whole. Low self esteem is, perhaps, one of the most insidious results. Victims feel so badly about themselves that they are unable to form age appropriate social relationships, become depressed, are easy victims of ridicule, become suicidal, and all too often resort to alcohol and other drugs to numb their constant pain. Let me describe some of the situations we encounter. A girl was victimized by her father for 10 years. She is totally alienated from her mother, whom she blames for not protecting her. Her only social interest is "getting high." She has school problems, no close friends, virtually no communication with her family. During therapy sessions she sits and cries, unable to even verbalize her thought or feelings. Her mother has no idea how to bridge the gap with her daughter. The younger daughter in the family remains close to her father, who is incarcerated. This closeness is a constant painful reminder of her abuse for the victim. The mother has requested counseling for the younger daughter who has begun to have her own problems. She is on our waiting list.

This single case illustrates the multitude and complexity involved in sexual abuse cases: substance abuse, family disruption, impact on other family members, social isolation of the victims, and most of all the incredible pain victimization brings.

On Hopi, reporting on incestuous relationship may mean tearing a family or village apart in a very different way than in a big city. Families frequently live together in the same home, or in houses very close to one another. It is not possible to "avoid" members of the perpetrator's family. Victims may be blamed for a family's loss of income due to incarceration of an alleged perpetrator. Now this blame happens everywhere. But in a clan-based system where extended family is very important, the pressures on a victim or witness to recant are magnified. The pressure to not report at all is enormous. Ostricizism by extended family can mean exclusion from participation in important cultural rituals.

By now you may be aware that the perpetrator in one of the cases you heard about two weeks ago killed himself in jail. We are very worried about his young victim and the victim's family. Now, they are likely to be blamed for this man's death.

Recently we have begun to organize a therapy group for female victims of sexual abuse, including rape. We came across some very disturbing stories of parents waiting up to three years for police investigations of these crimes. One mother stated that she had reported her daughter's abuse three years ago and still is waiting to hear from the investigator as to what is going on. Another parent stated that the police had taken statements from their daughter and witnesses five months ago and they had never heard another word. These examples illustrate a gap in services to victims.

Child abuse requires intervention from a wide variety of professionals: medical, law enforcement, tribal court, mental health, social services, education, and others. Representatives from all of these areas report increasing numbers of child sexual abuse victims in their caseloads. All are overworked, making coordination of services difficult. There is only one special investigator to investigate all the reported sexual abuse cases, in addition to his other caseload. There are only two children's court counselors to investigate all allegations of child abuse on Hopi, where the population is approximately 10,000 people (50% of whom are age 18 or under). We have encountered confusion by educators as to what types of behavior are "reportable", suggesting that abuse reports may increase as teachers and administrators increase their awareness of behavioral symptoms of child abuse.

While child sexual abuse in Indian country is a federal crime, federal prosecution of alleged perpetrators often takes months or years following the revelation of a crime. This time is often devastating to the victim and his/her family. The victim feels "exposed:" their secret is out. Victims often believe that "everyone knows" what happened to them. They may become increasingly isolated, fearing public exposure. Family members often feel this same vulnerability. Victims may fear retaliation by the perpetrator.

If the perpetrator is not immediately taken into custody and kept in custody, this fear may increase. I have seen victims who were not informed that their perpetrator had been incarcerated. It is very important for their peace of mind to be informed of the on-going legal proceedings in their case. A victim may spend weeks dreading a courtroom confrontation which will never occur because the perpetrator has plead guilty. Yet no one told the victim.

I understand that there is some controversy involving victim's involvement in psychotherapy prior to criminal prosecution of their case. I believe I understand some of the issues involved. As a clinician it is extremely difficult to think of a situation in which purposefully withholding treatment is the ethical course of action. Given the extremely long period of time which can elapse between reporting of a crime and federal prosecution, we may be talking about denying a victim treatment for over a year. Rather than re-victimizing a child in this fashion, creative solutions to possible problems should be sought.

I recognize the serious concern that a witness may be "tainted" by psychotherapeutic interventions or may "clam up" about the abuse. However, these problems may be preventable by utilization of professional staff trained in this field. Therapists are not the only professionals who taint witnesses. I have heard of cases where an investigation died because the investigating officers lead the witness to such an extend as to make their testimony useless. Why single out the one professional who may be able to ameliorate the damage to child as the one who will not have access to that child?

Finally, I'd like to briefly address the serous and, on our reservation, rapidly growing problem of juvenile/adolescent offenders. Statistics vary, but researchers agree that sexual abuse victims, particularly male victims, are at high risk to become offenders themselves. During my 10 months at Hopi I have been aware of at least six juvenile offenders.

In Arizona there is only one inpatient treatment facility for adolescent sexual offenders. the program at Phoenix Memorial Hospital costs $450 a day. The program is designed to last six to eight weeks. An eight week stay would come to $24,300. To treat the sex offenders already identified would amount to $145,800, not including aftercare costs. This is a large amount of money and not unexpectedly either IHS Mental Health nor Hopi Tribal Social Services can afford such fees.

Right now we have a teenage offender who has been ordered by the tribal court to inpatient treatment. After months of resisting treatment, the young man is now willing to seek help. There is a bed available for him in the Phoenix Memorial program. But his placement has been stalled for weeks as the various programs involved (IHS and Tribal Social Services) argue about who will pay for treatment. Increased allocations of funding will be necessary to provide for new needs such as offender treatment, as well as victim services.

Prevention and treatment services are not only much more cost-effective, they help to prevent the creation of new victims. Therapeutic services can be provided for as little as $12.00 an hour by full-time clinical social workers, prevention services for as little as $6.49 an hour by a community educator. A clinical social worker, paid $12.00 an hour could provide 50 hours of therapy for $600.00. This would equal a year of therapy for the cost of less than two days of inpatient offender treatment. A community educator could provide a year of full-time prevention services for less than 10 days of inpatient offender treatment.

Prevention programs and victim services such as those provided by the Hopi Special Project are cost-effective as well as beneficial. You have heard about the services we provide. I wonder what BIA or IHS programs have served over 700 people in one year with so few staff and resources? As you know our current funds will be exhausted on June 30, 1989. Once again I ask for your support to secure multiple year funding for our valuable program. Without these funds we will need to begin terminating clinical services in eight weeks. Existing funding levels will not allow IHS or BIA social services to pick up a $500,00 program out of their operating budgets. Additional allocations of funds targeted for sexual abuse treatment will need to be made.

The Hopi Tribe has developed a successful model for child sexual abuse treatment in Indian country. Unfortunately, many other tribes have need of such programs. Let us expand our program and illustrate how such a treatment program can benefit individuals, families, and entire communities. Inpatient programs at $450.00 a day are not only expensive, they are useful only _after_ a child begins abusing others. I hope we can work together to reach victims before they become offenders, to heal families before they are irreparably torn apart, and to teach children how to create a safer world for themselves where they can learn to be happy, self-confident, non-abusing adults.

Thank you.

Report on Child Sexual Abuse
Issues from the Cherokee
Indian Reservation

Prepared for
United States Senate
Special Committee on Investigations

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INTRODUCTION

The existance of child sexual abuse on the Cherokee Indian Reservation, or Qualla Boundary, is a real and horrifying social phenomenon. Over the past four years the number of reported incidences has increased at an alarming rate. Over the past year an estimated thirty to forty reported cases were referred to the local counseling center for treatment. The severe nature of the sexual abuse cases has demanded that action be taken. A full range of sexual abuse has been exposed on the Reservation including but not limited to child pornography, anal, oral, and vaginal penetration, fondling, voyeurism, exhibitionism, and mutual masturbation. The majority of sexual abuse cases are incestual or intrafamilial, involving some member of the immediate or extended family. The remainder of the perpetrators have been identified as friends, teachers, day care providers, or other individuals who have close contact or supervision responsibilities over the child. The victims have ranged from eighteen months to seventeen years of age and the perpetrators have started as young as age twelve.

Contributing factors to this overwhelming problem are geographical and social isolation and lack of education and resources. The social structure of the Reservation is basically a closed system with little influence from the outside. The families are closed units tolerating little to no interference from the outside and often reside in multi-generational, mini communities. Family problems and family secrets are dealt with internally. This provides excellent breeding grounds for sexual abuse. It is the rule, rather than the exception, to find multi-generational sexual abuse within these family units. Because the geography of the Reservation is mountainous, isolation is enhanced and contributions to maintaining abusive family systems. All of this in conjunction with limited awareness of prevention, education, and treatment resources, leaves many children vulnerable to sexual abuse.

PREDISCLOSURE CHARACTERISTICS OF THE VICTIM AND THEIR FAMILIES

Victims of sexual abuse exhibit identifiable behavioral traits or patterns and reside among families with unique characteristics. In hindsight almost all of the victims demonstrated characteristics commonly seen in children who have been sexually abused. Their predisclosure behaviors included the following: an abrupt change in behavioral patterns (associated with the onset of the sexual abuse), seductive or promiscuous behavior with others, preoccupation with body parts, age inappropriate sexual behavior or knowledge of sexual behavior, poor school performance, unexplained aggressive behavior, depression, withdrawal, running away, reluctance to go home or to places previously frequented, separation anxieties, lack of ability to concentrate and attend and regression to previous developmental behaviors such as enuresis, encopresis, baby talk, or frequent crying. Sleep disturbances and phobic-like behaviors have also been observed.

In most cases, the parents, teachers, and other significant adults associated with the child often dismissed these behavioral traits as just a phase the child was going through or as a means by which to get attention. For adolescents, their behavioral manifestations were interpreted as rebelliousness. Unfortunately, because of a lack of education and knowledge, many children continued to be abused. Except for some extremely young children, reluctance to report the abuse centered around their fear that parents or care takers would be angry and blame them for the abuse, or, would reject and severely punish them for their involvement. All of the children internalized their anger, shame, and guilt. Some sumed that sexual abuse happens to everyone.

Physical indicators have also been a means by which children have been identified as victims of sexual abuse. The presence of various forms of venereal diseases, pregnancy (prior to the age of twelve), trauma to or irritation of the genital area, unusual bruises or sores and complaints of pain involving the genitalia or rectum have also led to investigations of suspected sexual abuse. Within the past two years five children were discovered to have contracted a venereal disease, one child became pregnant at the age of ten, and ten have had complaints of irritation or pain in the genital or rectal area. Victimization has also manifested itself indirectly through play and drawings. Children often act out their sexual experiences with their toys, verbalizations, or with other children. Drawings reveal not only eventual data but emotional ones. In all levels of the investigation and treatment, art and play therapy helped children express feelings and describe events. Anatomical dolls helped the child communicate accurately the sexual acts performed on them.

The incestual family is dysfunctional and has many psychological problems. If the victim comes from such a family, which is probably the most damaging, the family system must be understood in order to help the child. Such families have been enveloped into a pattern of secrecy and denial, helplessness, entrapment, accomodation, delayed disclosure and retraction. One or more of the following characteristics usual apply to incestual families: previous occurence of child sexual abuse (one or both parents may have been victims), other forms of domestic violence such as spouse abuse, rigid role structure, extreme over protectiveness, substance abuse, role reversal between victim and parent, absence of one's spouse, isolation (social, emotional, geographic),inappropriate physical contact, lack of privacy due to over-crowding, and restriction of family activities. As can be seen the presence of sexual abuse leaves many signs. It is imperative that these signs be recognized if sexual abuse is to be stopped.

DISCLOSURE AND INVESTIGATION

Disclosures of sexual abuse can occur anywhere and to a wide variety of people; to parents, teachers, nurses, counselors, social workers, relatives, or friends. Disclosure is sometimes intentional and sometimes accidental. The initial disclosure period is probably the most crucial to the success of the investigation. The lack of knowledge of how to interrogate a child or procedures to follow can detrimentally affect the outcome of the investigation. If a child feels threatened or is made to believe that the significant people in his/her life do not believe and support them, the child will either refuse to divulge further information or recant his/her story. It is at this stage that representatives from the Department of Social Services, the FBI, physicians, and mental health professionals must learn from the child as much about the events of sexual abuse as possible. Unfortunately, the child may have to be questioned on five separate occasions. The members of this multi-disciplinary team need to be sensitive to the fact that families are thrown into shock and can quickly become explosive or immobilized. The initial response of most parents is to physically attack or kill the perpetrator. Almost immediately the family is thrown into a crisis and normal functioning disintegrates and is replaced with overwhelming feelings of anger, guilt, shame, and a need to avenge the crime. Awareness of this can defuse potentially dangerous and damaging situations. Each member of the multi-disciplinary team has clearly defined roles and responsibilities in the investigation. The Department of Social Services is charged with the responsibility of substantiating the existence of the sexual abuse or neglect of the child to determine the dangerousness of the environment of the child. The FBI and other law enforcement personnel obtain the facts of the case so that the appropriate legal action (s) can be taken to stop the abuse. A licensed child medical examiner must examine the child for any physical trauma or disease. Sometimes, a mental health professional needs to assist in the investigation providing specialized expertise to assess the child's mental status, clarifying disclosure issues, and to provide crisis intervention to the family. This information becomes incorporated into the body of the investigation. Too often, the investigation hinges on the mental health professional's findings because other members of the team are unable to get the necessary information from the child and family. Treatment is sometimes necessary to get adequate disclosure and may take many months to obtain. This can be particularly detrimental to the child and family if the same professional then becomes their therapist. Legal and treatment issues often do not blend together well. One cannot always be an advocate of the legal system and the victim and their family at the same time.

TREATMENT ISSUES

Generally, the initial stages of treatment deal with the issues of completing disclosure and crisis intervention. Intense feelings of anger, guilt, shame, and responsibility for the abuse is shared not only by the victim but the family members as well. With the use of anatomical dolls and drawings, the victim is often able to more specifically relate actual abuse episodes and to demonstrate and illustrate their feelings. Relief is often felt by the child because they are removed from the abusive situation. However, for the parents, the nightmare has just begun. Their guilt and shame become overwhelming. And they often blame themselves. The disclosure for many families intensifies any existing familial problems. Over-protectiveness and social and emotional withdrawal are two of the largest obstacles these families must over come.

If the sexual abuse was incestual, major treatment issues involve coping with separation anxieties, acceptance or rejection by family members (immediate and extended), and custody. To say the least, the families are thrown into disarray and their normal patterns of functioning are disrupted. Treatment for the victims and their families is dependent on the reaction of the non-offending parent. Separation and divorce are almost inevitable. If charges have not been filed, or the perpetrator is free on bond, fear of continued abuse is real and intense. For two families on the Qualla Boundary, these issues had to be dealt with for up to eighteen months and in both cases, physical and emotional abuse continued by extended family members. Exploitation of the victim and witnesses went so far as to require a hearing in which warnings against harrassing family members were filed. This is a very confusing, dangerous time for the victim and their family. As they begin to feel that their disclosure has caused all of the emotional upheaval within the family. The family is under so much stress that all involved question whether pursuing the charges is worth it. In at least five cases, criminal charges were dropped because they could not withstand the pressure and/or the victim began to recant their story.

Unfortunately, in most cases, the trial dates are continued for many months. This heightens anxiety by prolonging the anticipatory period. The damage this can cause the victim and family is tremendous. External pressures increase as the community becomes more involved and polarized, there is more time to ruminate about all the possible outcomes, families become more emotional labile, and overt and covert harrassment intensifies. Due to the busy schedules of U.S. Attorneys and FBI agents, little time is spent with the victim and their families preparing them for court. Uncertainty and anger wells up within the parents against the legal system because they feel put off and ignored. To some extent, this has been true of all cases in which I have been involved. Time must be spent with the victim and the family to gain their trust and to insure the cooperation of the child as a witness. A frightened child will be a useless witness. In one case, involving a two year old, its success was dependent on the fact that the U.S. Attorney actually went to the home and established a good rapport with the child. During the trial, she was able not only to describe in detail the nature of the abuse she had encountered, but to easily demonstrate a knowledge of right and wrong, establishing her own competence.

The prolonged effects of sexual abuse on the child and family can be extensive, requiring many years of treatment. The duration and level of violence inflicted on the child by the perpetrator determines, by and large, the extent of psychological damage. For any child who has experienced sexual abuse for prolonged periods of time, issues of trust, personal safety, insecurity, become paramount. They feel confused about who they can trust and who can protect them. Their self-esteem is shattered and they harbor intense anger and rage towards the perpetrator, significant adults with whom their welfare was intrusted, and themselves. As a result, their ability to establish healthy interpersonal relationships with their parents, siblings, peers, teachers, etc., is markedly diminished.

Because they were prematurely exposed to sexual behavior and unable to comprehend its meaning, the child's psychosexual development is interrupted often causing identity disorders. Male children often fear homosexuality and female children may become promiscuous and seductive towards males. An underlying depression develops. Coupled with the existing feelings of anger and rage, suicidal and/or homicidal ideations emerge. These dynamics have been seen in children as young as five years of age. These feelings are depicted in children's drawings and play during treatment. Should children and victims go untreated, there is the possibility that they, too, will victimize other children as they approach their adolescense, perpetuating the cycle. At this time, I am aware of seven children who have now begun to victimize others. They vary from nine to seventeen years of age. Each had previously been a sexual abuse victim.

TREATMENT MODALITIES

To have any impact on sexual abuse, therapeutic intervention must include assessment and treatment not only of the victim, but of the offender. It also needs to be multi-modal.

The treatment of sexual abuse victims and families needs to incorporate individual, family, and group therapies. Individual treatment allows the child to express events and feelings he might not divulge in the presence of others. These children quickly become aware that their parents or siblings cannot emotionally withstand hearing about the sexual experiences. It frightens the child to see parents cry and express anger. When this happens, the child withdraws, learning that what he/she has to say evokes negative feelings. The use of dolls, play therapy, and drawing often give the child a safe and indirect way of relating and expressing themselves. It also gives them the opportunity to act out their negative feelings toward their parents and ask questions about why and how this could have happened to them.

Group therapy for victims is utilized to develop peer support. It provides a less threatening environment where the child can share with peers and reduces the need to maintain secrecy. The feelings of isolation and being "different" are also counterbalanced.

Family therapy is essential in the therapeutic intervention process. The family, especially parents, are given facts about sexual abuse. Fear, denial, the tendency to forget what happened, guilt, and sabotage are addressed and challenged in family treatment. It is important here to assist parents in regaining control, self respect, confidence, and establishing appropriate roles and boundaries for all family members.

Parent support groups are beneficial in decreasing their sense of isolation, fear and guilt. These groups should ideally include both parents assuming that neither is the offender.

Treatment for the offender should also be incorporated as part of the continuum of services provided. The cycle of sexual abuse must be tackled from both sides.

The youthful offender can benefit from treatment if started early in the offending cycle. Since many of these youth are also victims, between seventy-five to eighty-five percent, their treatment incorporates similar techniques as those already presented. It deviates in that it cannot be left as a voluntary issue but must be mandated and supervised by the courts. Some individuals can be maintained in the community with strict guidelines and structure; others cannot and must be imprisoned. Treatment of the offender population requires extensive training and careful planning, organization and interagency cooperation.

Currently, the Cherokee Indian Reservation must receive these services through non-Indian resources; that is, the Indian population must go off the Reservation to receive any aspect of treatment. Unfortunately, this minimizes availability of services to its citizens.

RECOMMENDATIONS

1. Establish an identified multi-disciplinary sexual abuse team with professionals from the Department of Social Services, the FBI, law enforcement, the medical field, and mental health, who are all trained in the issues of child sexual abuse. This would avoid confusion as to who should be notified and expedite the investigation. The roles of each should also be clearly defined so that less confusion exists at the time of the investigation. Emergency or hot line numbers should also be publicized so that all calls come into the same location and the team can be notified.

2. An extensive prevention and education plan should be formalized targeting the schools, day care programs, hospitals, parent groups, community organizations and groups. Its purpose would be to provide community awareness and educate the public in sexual abuse and resources available. This might best be done through a task force composed of community professionals, concerned parents, and agency representatives. Many such programs also utilize volunteers and establish local men's and women's groups.

3. Funds need to be made available to establish treatment programs for the victim, youthful offender and their families.

4. Legislative action is needed to modify existing laws regarding sexual abuse on the federal level, especially concerning the adolescent offender. Because sexual abuse is a felony, existing juvenile codes do no provide for coping with the youthful offender. There is also reluctance to prosecute juveniles and adults if the sexual abuse did not involve physical trauma. If this cycle is to be stopped, the laws need to reflect that all forms of sexual abuse and assault are punishable.

5. U.S. Attorneys and other branches of the federal judicial system need to be trained in how to prosecute sexual abuse cases. This would probably reduce the probabilities of extended trials and cases lost due to lack of convincing evidence. Trials would be speedier which is most beneficial for the victim and family.

6. A licensed child medical examiner is needed at the hospital to provide medical care to the victims.

Elizabeth T. Shiek, M.A.

Credentials:

Under graduate degree from Centre College
of Kentucky 1969-1973

Graduate degree from Western Kentucky
University 1973-1975
Masters in clinical/school psychology

Child and Youth Therapist-Barren River Comprehensive
Care Center 1975-1978

School Psychologist-Hendersonville County
Schools 1978-1979

School Psychologist-Tithe I Cherokee
Elementary School 1979-1982

School Psychologist and Staff Clinician
Smoky Mountain Center for Mental Health,
Mental Retardation and Substance Abuse
1982-1984

Center Director/Staff Clinician-Swain County Center
Smoky Mountain Center for Mental Health,
Mental Retardation and Substance Abuse
1984-present

Specialized Training in Sexual Abuse:
Knoxville Institute for Sexual Abuse Treatment
Training (week long) December 1983 and 1984

Attending Workshops by:
Nicolas Groth
Jonathan Ross
Suzanne Sgroi

Child Sexual Abuse: A Basic Introduction

What Is It?

Child sexual abuse is the exploitation of a child for the sexual gratification of an adult or any significantly older person. It is called incest if it occurs between family members, including mothers, fathers, sisters, brothers, grandparents, aunts, uncles, cousins, adoptive and step relations, legitimate or illegitimate children, or relatives of whole or half blood.

What Is It Not?

Child sexual abuse shouldn't be confused with physical contacts between an adult and a child that are fond or playful expressions of love. Responsible adults limit their physical exchanges with a child, respecting the child and at the same time maintaining a warm, healthy, affectionate relationship.

What Behaviors Does It Include?

Child sexual abuse can include a wide range of activities, including non-forced offenses such as verbal stimulation, obscene phone calls, exposure, voyeurism, and showing a child pornographic pictures or films; and forcible, touching offenses such as fondling, oral intercourse or attempted intercourse, vaginal or anal intercourse or attempted intercourse, and exploitation of children through prostitution and/or child pornography.

Scope & Statistics

- **1 in 3-4 girls will have been sexually abused by age 18.**
  This figure takes into account the range of behaviors described above. (Diana Russell, 1983; David Finkelhor, 1978; Vincent De Francis, 1969)
- **1 in 6-10 boys will have been sexually abused by age 18.**
  Reports of boy victims are increasing; some experts believe as many boys are abused as girls. (Terryann Nielson, 1983; National Council for Prevention of Child Abuse, 1979; Susan Sgroi, 1978)
- **90% of offenders are known to the child.**
  Child sexual abuse is more frequent within families than outside families; disabled children are especially at risk of sexual abuse, especially from people they already know. (Sexual Assault Center, Seattle; National Council for Prevention of Child Abuse, 1979)
- **Child sexual abuse happens in all racial, religious, and ethnic groups, and at all socio-economic levels.**
  No group is "immune" from sexual abuse; the offender can be a person in any occupation. (Summit & Kryso, 1978; May, 1977)
- **The average age for the onset of a sexually abusive relationship is 6-8 years old.**
  Reports of molestation of very young children are increasing; more than one-third of all child victims may be 5 years old or younger; children as young as one week old have been molested. (Sexual Assault Center, Seattle; Child Protective Services, Seattle; Department of Health and Hospitals, City of Boston, 1984)
- **Child sexual abuse is seldom a one-time occurrence.**
  Abusive relationships last an average of 1-4 years, and many last much longer than 4 years. (National Center for Prevention of Child Abuse, 1979)
- **At least 65-75% of prostitutes were sexually abused as children.**
  (Boyer & James, 1982; Enablers Study, Minneapolis, 1980; C. Henry Kempe Center, Denver)
- **Offenders almost never seek treatment voluntarily.**
  Abuse will most likely continue unless a report is made. (Groth, 1979)

(continued)

(. . . A Basic Introduction continued)

- **Children very rarely lie about being sexually abused.** (Sanford, 1981; Burgess, Groth, Holmstrom & Sgroi, 1978)
- **The large majority of child sexual abuse incidents go unreported,** but the reporting rate is increasing in many parts of the country. (National Center for Prevention of Child Abuse; Child Protective Services, Seattle)
- **Every state now has a child abuse reporting statute;** Anyone can report suspected cases; certain mandated reporters must report suspected cases.
- **Child sexual abuse is illegal regardless of whether the child "consents" or not.** Consent is not an issue. The offender bears the entire responsibility for the molestation, whatever form it takes.

DEFINITIONS

Federal Statutes

The development of uniform, operational definitions for terms such as child sexual abuse, child sexual assault, incest, and child molestation remains problematic for clinical practitioners and researchers. Strictly legal definitions often provide little insight into the issue. There is little uniformity among state, civil and criminal statutes relating to the sexual abuse of children. Many Federal and State laws provide little guidance as to the specific meaning of the terminology used. In most parts of the country, definition of what constitutes the sexual abuse of children still remains largely a matter of jurisdictional and individual interpretation.

1. **Original definition of child abuse and neglect as contained in the Child Abuse and Prevention and Treatment Act of 1974 (P.L. 93-247 amended in 1978):**

   "For the purposes of this Act the term 'child abuse and neglect' means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State in question, by a person who is responsible for the child's welfare under circumstances which indicate that the child's welfare..."

2. **Definitions of child sexual abuse as contained in section 5 of the Child Abuse Prevention and Treatment Act (P.L. 93-247 as amended):**

   "... sexual abuse includes the obscene or pornographic photographing, filming, or depiction of children for commercial purposes, or the rape, molestation, incest, prostitution, or other forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened thereby as determined in accordance with regulations prescribed by the Secretary..."

3. **Current National Center on Child Abuse and Neglect expanded definitions of child sexual abuse:**

   Child sexual abuse is defined as contacts or interactions between a child and an adult in which the child is used for the sexual stimulation of the perpetrator or another person. Sexual abuse may also be committed by a person under the age of 18 when that person is either significantly older than the victim or is in a position of power or control over another child.

   "Intrafamily sexual abuse" is further delineated as "a person who is responsible for the child's welfare", including extended family members and/or parental figures or other significant others in a child's life.

DEFINITIONS

General

1. **Sexual assault** is a term used to refer to a wide range of assaults: rape, attempted rape, child sexual abuse, incest, indecent liberties, and statutory rape.

2. **Rape** is defined as penetration of the vagina or anus, however slight, by a penis or an object, or any sexual contact between the sex organs and mouth or anus, when committed by one person upon another person of the same or opposite sex, without consent. Rape is an act of violence using sex as a weapon. It is done to humiliate and control another person. Rape can happen to anyone (man, woman, or child), of any age, and it can happen anywhere.

3. **Acquaintance rape** is rape between two people who know each other. Most rapes are of this type. Young people are especially vulnerable to acquaintance rape because they frequently date and may not yet have developed clear and assertive communication skills.

4. **Child sexual abuse** is defined as contact or interaction between a child and an adult or older person when the child is being used for the sexual stimulation of the perpetrator or of another person. "Child" refers to a boy or girl under 16 years of age. The perpetrator need not be an adult, as long as the perpetrator is significantly older than the victim and/or in a position of power over the victim. Child sexual abuse includes a wide range of sexual activity ranging from "non-violent", non-touching offenses such as exposure, to offenses that do involve physical contact, and sometimes the use of violence or physical force, such as fondling, oral/genital contact, vaginal and anal stimulation and penetration, incest, and exploitation of children through pornography and prostitution.

5. **Incest** is defined as any sexual contact between family members in which an adult or older person seeks or gains sexual gratification through the child. This activity may include fondling, manual or oral manipulation of the genitals, or intercourse. Family members include mothers, fathers, grandparents, aunts, uncles, brothers, sisters, cousins, adoptive and step relations.

6. **Indecent liberties** is defined as forced or coerced sexual contact between two people, where sexual intercourse does not occur. If the victim is 13 years or younger, it is a crime even if force is not used.

7. **Statutory rape** is defined the same as rape, except the victim is under 16 years of age and consent is not a determining factor. Sexual abuse of children is illegal regardless of whether the child consented to the sexual act. The law holds offenders responsible for sexual activity with underage persons.

Juvenile Sex Offenders: Basic Facts

- The majority of adult sex offenders committed their first offense while a teenager, and some committed their first offense at an even younger age.
- The average age of the first offense has been thought to be about 15 years old; presently, however, the average age is estimated to be 13.
- Recently, children as young as 7,8, and 9 years old have come to the attention of offender treatment programs. Children this young are not generally labeled "sex offenders," but prompt professional intervention is often necessary to prevent further abusive behavior.
- 70-75% of victims of sexual abuse by juveniles are female, according to the latest estimates.
- 90-95% of juvenile sex offenders are male, though reports of abuse by juvenile girls is increasing.
- The majority of male offenders have themselves been abused; and virtually all female offenders have been abused; children who are sexually abused, however, do not necessarily become offenders; a key factor in determining whether a survivor of abuse might become an offender is the availability and effectiveness of treatment for the original abuse.
- About two-thirds of juvenile offenders molest children outside their own families, and about one-third molest younger siblings.
- The most common setting for abuse by a juvenile is while babysitting.
- As is true also of adult offenders, the majority of juvenile offenders do not use physical violence to commit the abuse; more often the offender relies on bribes, trickery, and/or the threat of physical violence or of other negative consequences if the victim resists.
- Like adult offenders, the juvenile offender is very unlikely to admit having committed the abuse unless confronted, and often will not initially admit it even then.
- Even after admitting the abuse, the offender may at first say it was wrong only because "it got me in trouble" or "it's against the law." Many offenders have had little or no sex education and have incorrect ideas of acceptable sexual behavior. Their family situations are often marked by a lack of clear boundaries, or of any boundaries at all, with regard to role definition and privacy.

IDENTIFICATION

How Can I Tell If a Child Is Being Sexually Abused?

In general, few children speak directly about sexual abuse. Possible physical indicators include evidence of trauma to the mouth, genital, or rectal bleeding, complaints of pain or discomfort in the genital area, torn or blood-stained clothing, venereal disease, unusual or offensive odors, difficulty in walking or sitting, extreme passivity in a pelvic exam, and pregnancy in adolescent or pre-adolescent girls. In many cases, however, there are no visible signs of the abuse.

The following is a list of some of the common behavioral characteristics of young children who have been sexually abused. These indicators are offered with a gentle caution against over-zealous case identification. Any one of these indicators alone does not necessarily mean there is sexual abuse. They are general indicators of stress in a child. Several, extreme, or pervasive behaviors may indicate sexual abuse, and certainly warrant an exploration of the source of the problem.

Behavioral Indicators

- Unusual interest in and/or knowledge of sexual acts and language inappropriate to the child's age: the child may focus on sexual matters to the exclusion of many other activities or interests.
- Seductive behavior with classmates, teachers, other adults.
- Excessive masturbatory behavior.
- Wearing many layers of clothing, regardless of the weather.
- Continual avoidance of bathrooms: some abuse within homes takes place in bathrooms, and some children come to associate any bathroom with sexual abuse.
- Reluctance to go to a particular place or to be with a particular person.
- Frequent absence and/or late arrival at school, especially if the notes are always written by the same person.
- An abrupt change in behavior or personality.
- An abrupt change in behavior in response to personal safety lessons in the classroom, e.g., a child who is usually very involved suddenly withdraws or becomes anxious, or a child who doesn't usually participate suddenly takes an interest and reveals a lot of specific knowledge of the subject.
- Drastic change in appetite.
- Anxiety, irritability, constant inattentiveness.
- Regression.
- Over compliance, extreme docility.
- Compulsive behaviors, e.g., hoarding, constant washing.
- Appearing to have overwhelming responsibilities.
- Acting out adult sexual behavior: the child may seem to equate affectionate touch with sex.
- Suicidal threats, gestures: causing deliberate harm to her/himself.
- Use of alcohol and/or or other drugs.
- Aggression, anger directed everywhere, especially if this is a sudden change.
- Sleep disturbances, e.g. bed wetting, nightmares.

(continued)

("...Abused?" continued)

- Denial of a problem with a marked lack of expression.
- Lack of affect, extreme absense of expressiveness.
- Withdrawal/depression/excessive crying.
- Low self-esteem.
- Lack of friends.
- Attempts to touch adults', children's, or animal's genitals.
- Inappropriate dress, such as tight and/or revealing clothing.
- Reluctance to undress for p.e., continual avoidance of p.e. class; some children believe they have been "marked" and that others will recognize they have been abused once they undress.
- Reluctance to go home after school, or constant early arrival.
- Marked decline in interest in school, and in academic performance.
- Indirect hints, allusions to problems at home.

Family Indicators

- Marked role reversal between mother and child.
- Extreme over-protectiveness of the child.
- Extreme paternal dominance.
- Family isolated from community and support systems.
- History of sexual abuse for either parent.
- Extreme reaction to sex education or prevention education materials in the schools.

IDENTIFICATION

Indicators of Child Sexual Abuse*

by: Jane Ramon, M.S.W.
Supervisor, Sexual Assault Unit
Child Protective Services
Seattle, WA

Some of these indicators, by themselves, may not signify that child sexual abuse is occuring. However, patterns or a combination of indicators should give you cause for concern and a reason to question whether child sexual abuse is occurring or not, even when it is not the presenting problem.

FAMILY INDICATORS

1. Previous occurence of child sexual abuse.
2. Other types of violence in the home.
3. Families dominated by rigid role structure (paternal dominance/abused, passive mother).
4. Excessive interest in daughter's activities with boyfriends, other peer relationships, etc.
5. Extreme over-protectiveness toward the child.
6. Substance abuse.
7. Marked role reversal between parent and child.
8. Absent spouse (through chronic illness, depression, divorce, separation, illness, etc.).
9. Isolation (emotional, geographic, physical).
10. Unusual amount and/or inappropriate physical contact between family members.
11. Complaints about a "seductive" child.
12. Severe overcrowding in home.

MEDICAL/PHYSICAL INDICATORS

1. Venereal disease (anal, oral, vaginal or external genital regions).
2. Bruises, unusual swelling pain/itching of the anal, oral or genital areas.
3. Bleeding in these areas.
4. Torn or stained clothing
5. Pregnancy.
6. Physical symptoms - unexplained abdominal pain, sore throat, other psychosomatic symptoms.

BEHAVIORAL INDICATORS

1. Regression - withdrawing into fantasy worlds, wanting to be someone else.
2. Delinquency and aggression - especially sexual acting out and abuse to others.
3. Sexual promiscuity, prostitution and unusually seductive behavior.
4. Poor peer relationships.
5. Poor self-image.
6. Sudden school problems.
7. Depression.
8. Sudden sleeping/eating disturbances.
9. Excessive clinging and/or fear of going home, fear of a particular person.
10. Unusual fears or phobias, especially of being left alone, and of men/boys.
11. Self-destructive behavior (drug, alcohol, suicide gestures).
12. Excessive rubbing of the genital area (their own or others).
13. Confiding in someone, but not telling the whole story ("We have a secret, but I can't tell. . . what if. . . I want to tell you something but I can't...").

IDENTIFICATION

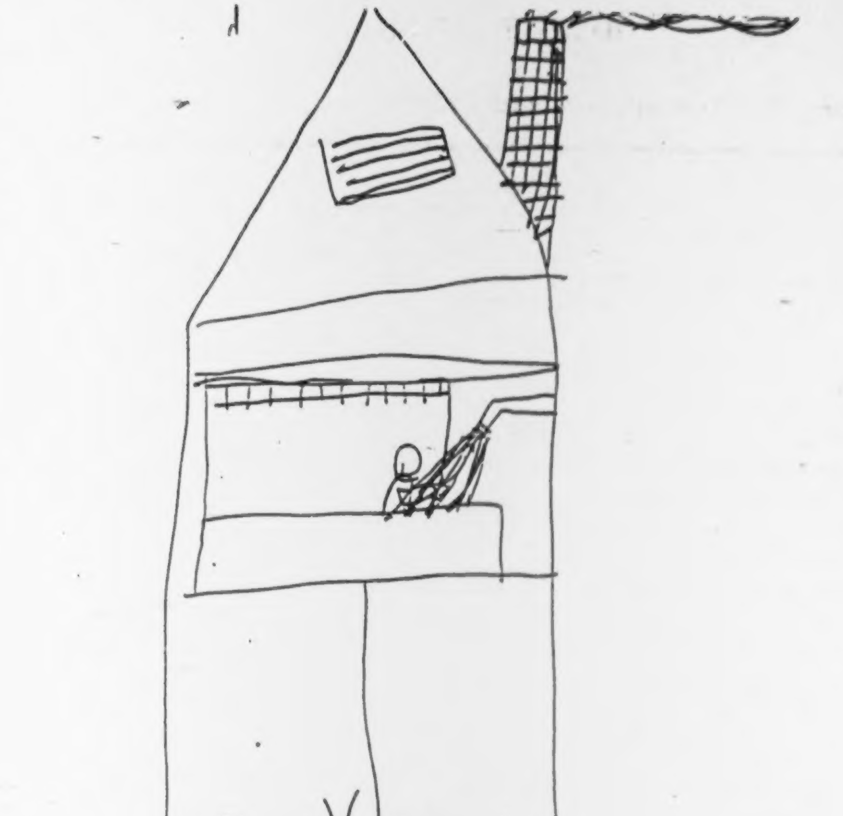
Identifying the Sexually Abused Child

The following is a list of some common behavioral characteristics of students who have been sexually abused. These indicators are offered with a caution against over-zealous case identification! Any one of these indicators alone does not necessarily indicate sexual abuse. They are general indications of stress in young people. Several indicators, extreme or pervasive behaviors, may indicate sexual abuse and warrant exploration of the source of the problem.

- Knowledge of sexual acts and terminology inappropriate to age or developmental stage
- Acting out adult sexual behavior, especially seductive behavior, promiscuity, or fixation on sexual behavior
- Reluctance to undress for physical education
- Extreme avoidance of touch
- Provocative dress and behavior
- An abrupt change in behavior or personality
- Poor school performance
- Appearance of adult responsibilities, especially if mother acts or dresses like teenager: role reversal
- Running away from home
- Drastic change in appetite
- Regression
- Lack of affect, denying abuse with no emotion, flat affect
- Aggression, destructiveness, anger directed everywhere
- Withdrawal and depression
- Excessive crying
- Anxiety, irritability, fears
- Few friends, poor peer socialization
- Pregnancy or venereal disease, especially if child has no apparent peer relationships
- Reluctance to go to a particular place or be with a particular person
- Indirect hints
- Extreme over-achiever, over compliance

There are some common family patterns noted in incest cases:

- Extreme over protectiveness of the child
- Extreme paternal dominance
- Family isolated from the community and support system
- History of sexual abuse for either parent
- Extreme reaction to sex education or prevention education materials being presented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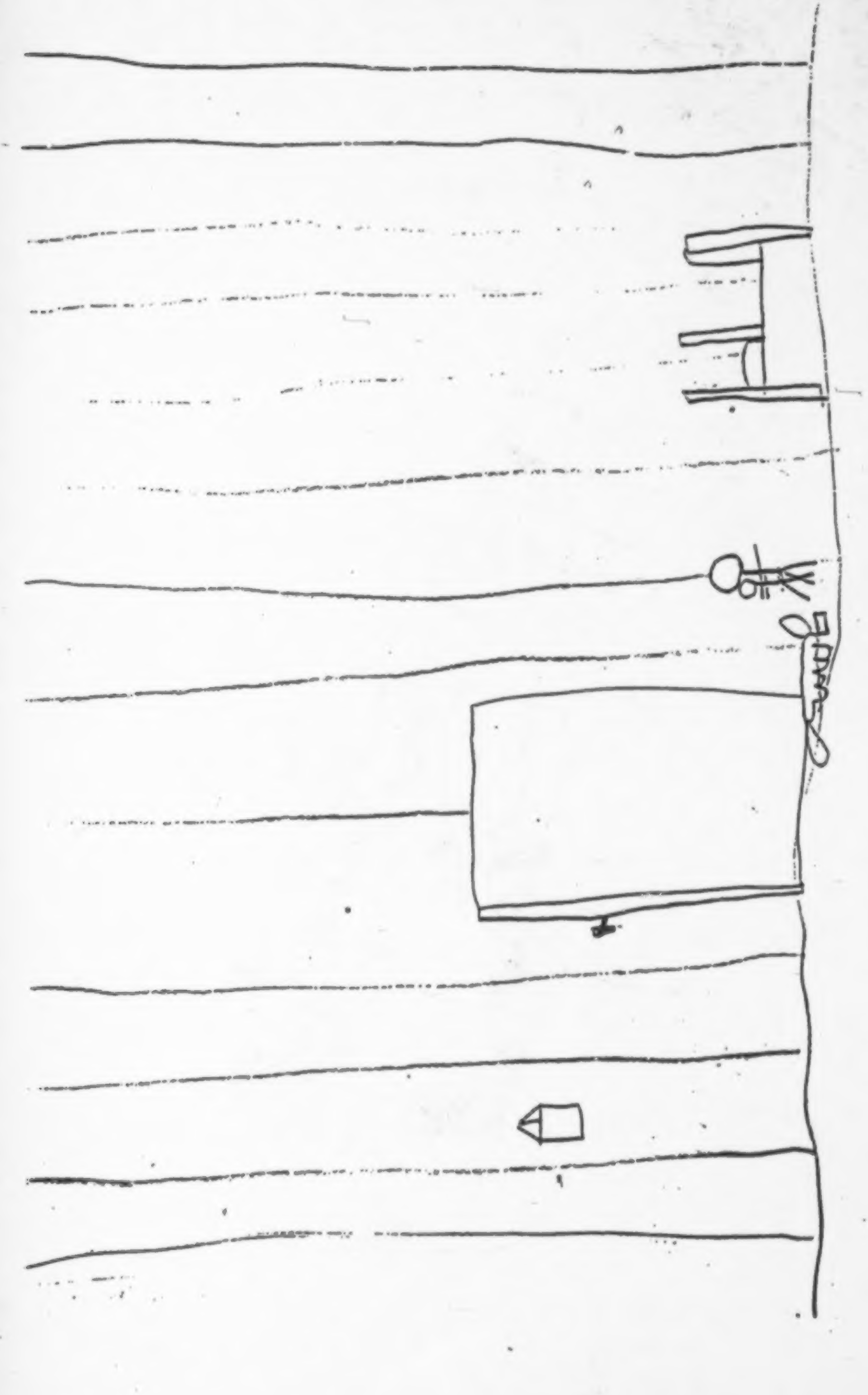

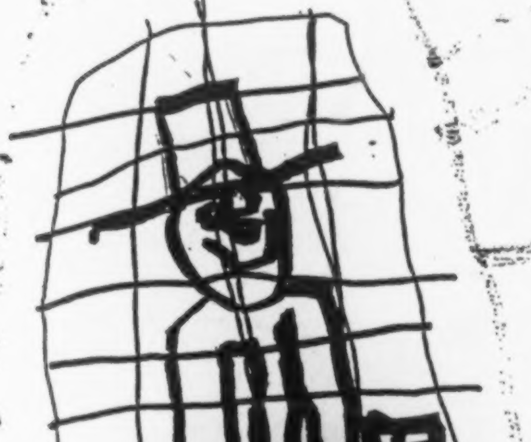

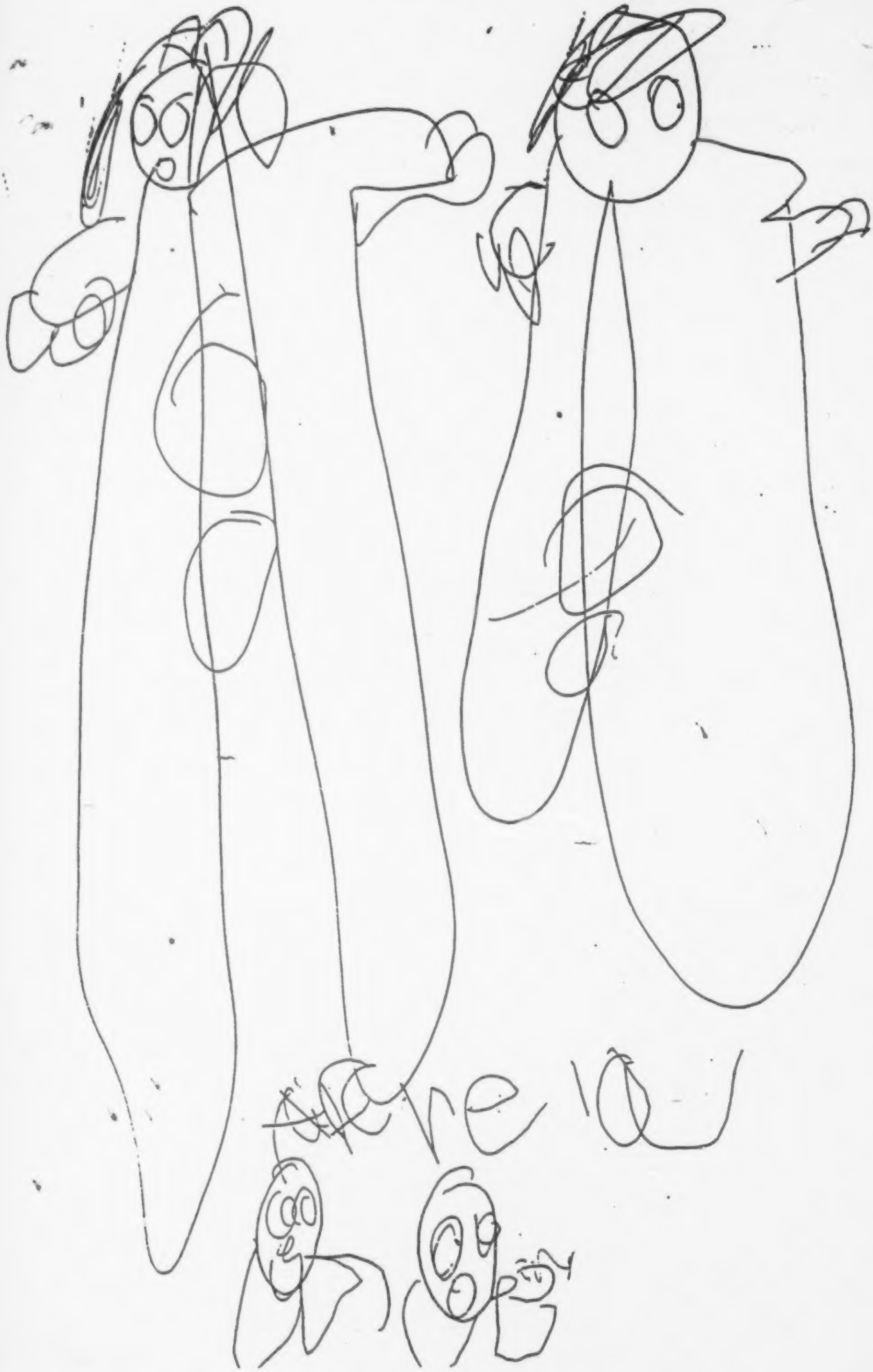

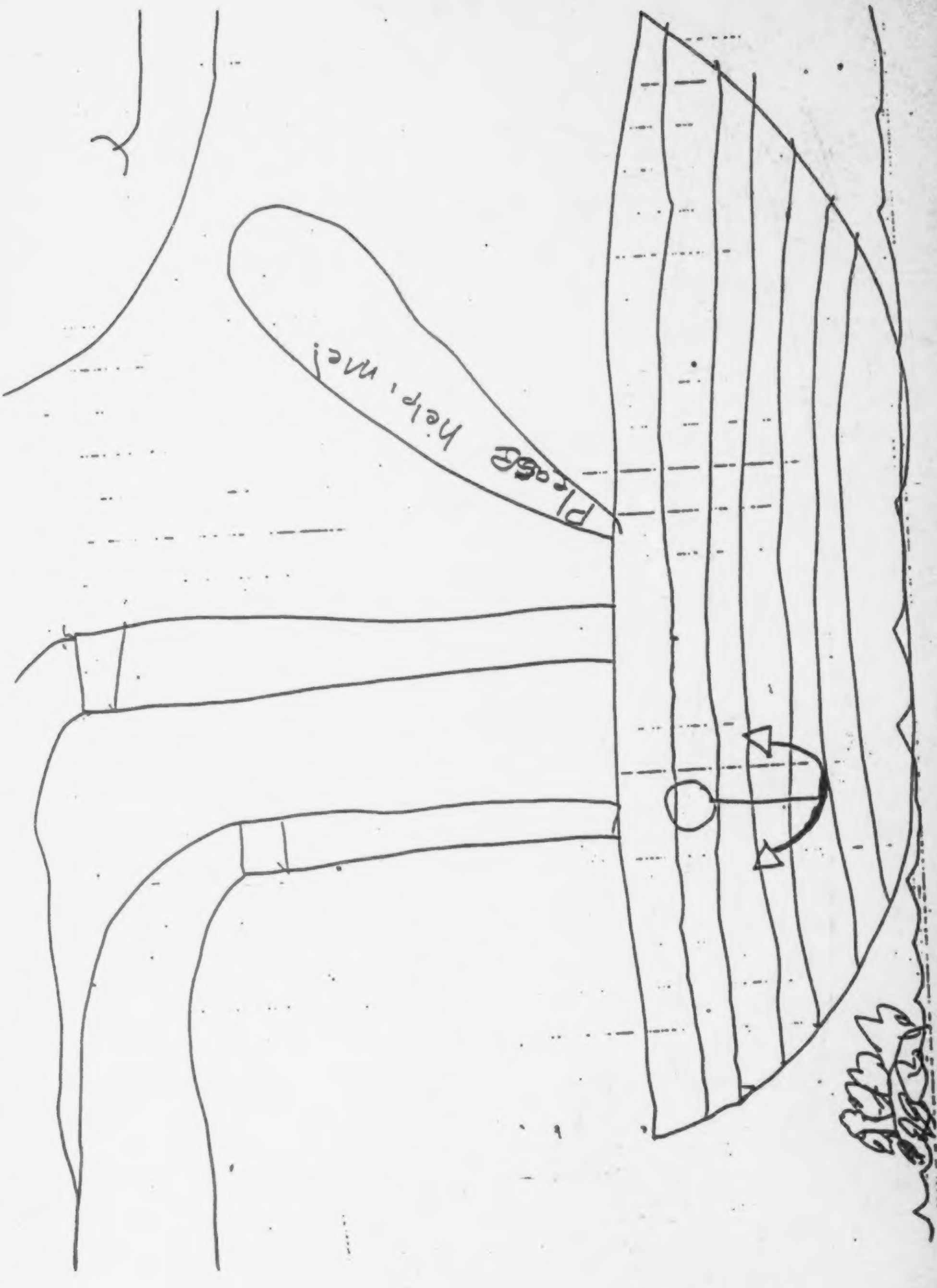
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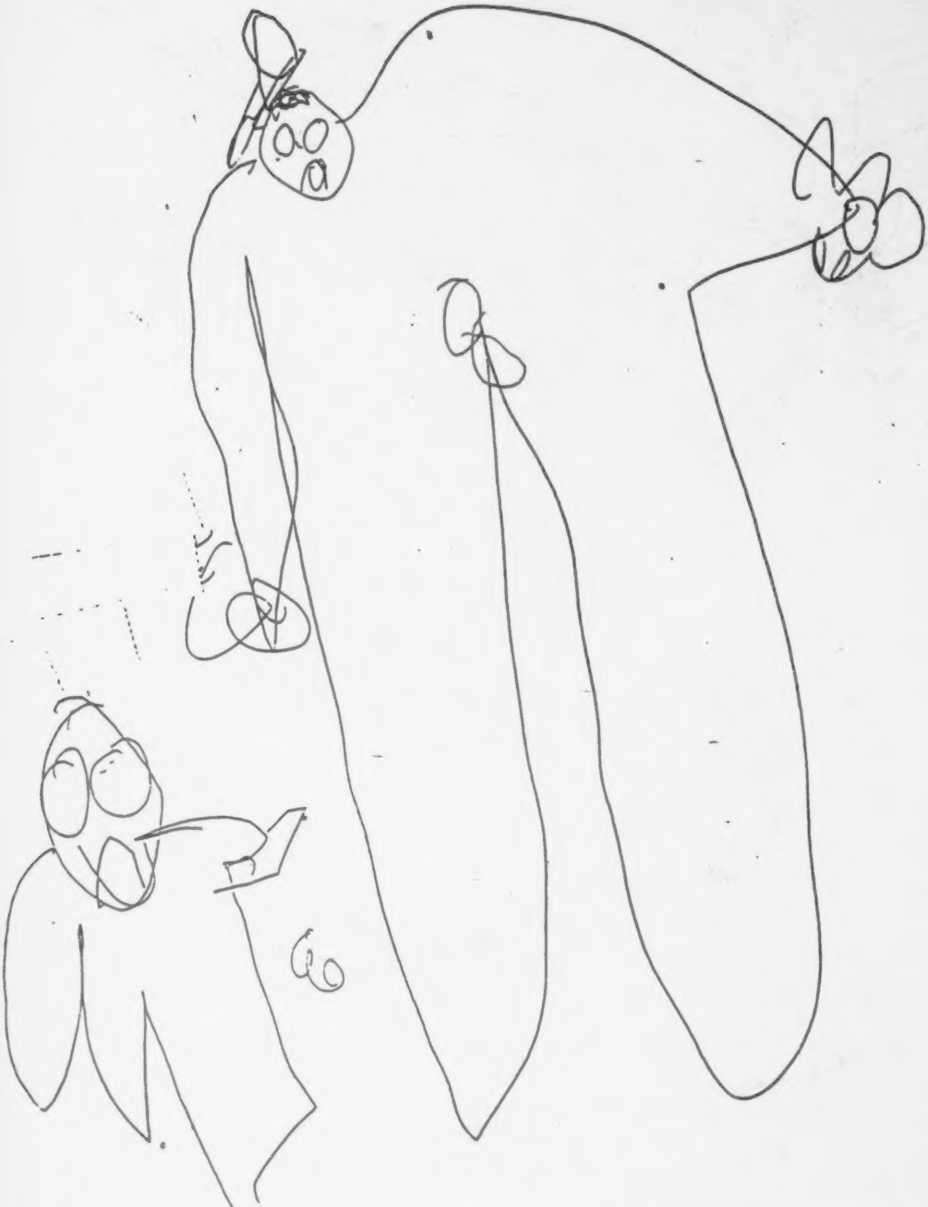

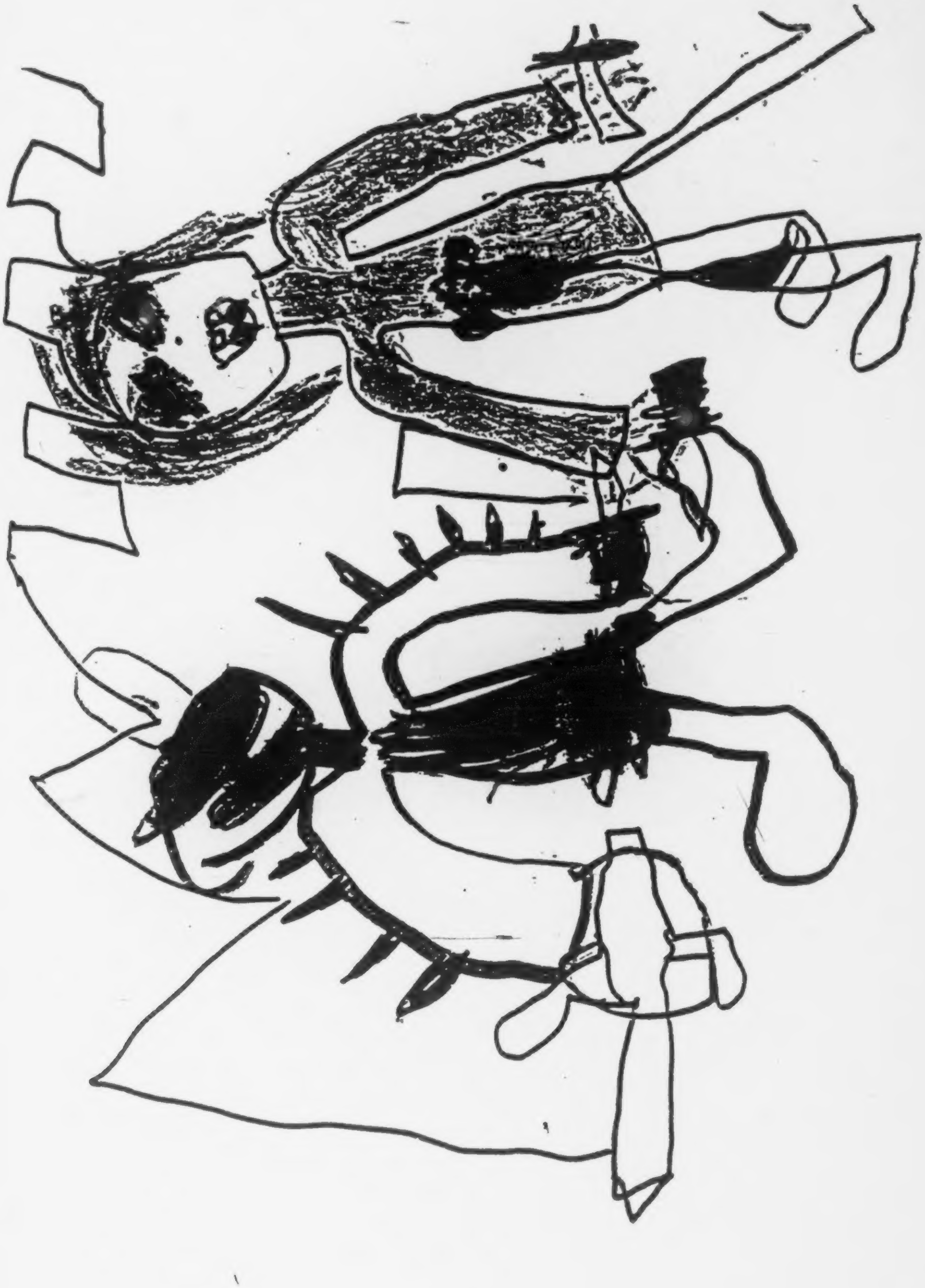

APPENDIX

FEBRUARY 23, 1989

OPENING STATEMENT
OF
CHAIRMAN DENNIS DECONCINI

TODAY WE CONTINUE OUR EXAMINATION OF THE FEDERAL GOVERNMENT'S LEGAL REPRESENTATION OF AMERICAN INDIANS. ON OUR FIRST AFTERNOON OF HEARINGS, WE HEARD EXTENSIVE TESTIMONY BY HIGHLY RESPECTED WITNESSES ABOUT THE INHERENT CONFLICTS IN RESOLVING LEGAL MATTERS AFFECTING THE GOVERNMENT'S COMPETING NATIONAL INTERESTS IN THE USE OF LAND AND WATER RIGHTS AND THE PRIVATE INTERESTS OF INDIANS IN LAND AND WATER WHICH THE GOVERNMENT HOLDS AS TRUSTEE. THIS PERVASIVE CONFLICT ALSO CREATES PROBLEMS IN POLICY MAKING WHICH WE SHALL HEAR ABOUT TODAY.

BEFORE WE START WITH OUR WITNESSES, I WOULD LIKE TO SUMMARIZE THE LETTER THAT WE ARE SENDING TODAY TO PRESIDENT BUSH:

[BEGIN SUMMARY OF LETTER]

"BASED ON THE RECORD OF TESTIMONY PRESENTED TO OUR COMMITTEES, AND OUR COLLECTIVE EXPERIENCE IN THE CONGRESS OVERSEEING THE EXECUTIVE BRANCH'S DEPARTMENTS AND AGENCIES THAT ARE CHARGED WITH TRUST RESPONSIBILITY, WE STRONGLY ADVOCATE A MORE FORMAL INSTITUTIONALIZED PROCESS FOR THE COORDINATION OF AMERICAN INDIAN POLICY AT THE WHITE HOUSE. THE INHERENT CONFLICTS FACING THE FEDERAL TRUSTEE ARISE NOT ONLY IN LEGAL MATTERS BUT ALSO IN POLICY DECISIONS.

IN FISCAL YEAR 1989, THE TOTAL GOVERNMENTAL FUNDING FOR INDIAN PROGRAMS WAS ESTIMATED BY THE OFFICE OF MANAGEMENT AND

BUDGET AS $3.1 BILLION. LITERALLY DOZENS AND DOZENS OF FEDERAL ENTITIES ARE INVOLVED THROUGHOUT THE GOVERNMENT.

WE URGE YOU TO CONSIDER OUR CALL FOR ACTIVE AND COORDINATED POLICY MAKING AT ALL LEVELS OF THE FEDERAL TRUSTEE'S GOVERNMENT, MOST NOTABLY AT THE WHITE HOUSE, THE OFFICE OF MANAGEMENT AND BUDGET AND THE DEPARTMENTS OF THE INTERIOR AND JUSTICE. TODAY, WE ARE NOT SENDING YOU SPECIFIC POLICY AND LEGISLATIVE PROPOSALS BUT RATHER A CALL OF CONCERN TO REAFFIRM OUR FEDERAL COMMITMENT TO THE AMERICAN INDIANS. WE, IN CONGRESS, ALSO HAVE A SPECIAL RESPONSIBILITY. WE PLAN, THROUGH THE WORK OF OUR COMMITTEES, TO REEXAMINE THE ROLE OF CONGRESS AND TO PROPOSE, IN DUE COURSE, LEGISLATIVE INITIATIVES.

THE MOST IMPORTANT AND SIGNIFICANT INDICATION OF YOUR ADMINISTRATION'S COMMITMENT TO HELPING ALLEVIATE THE DEPLORABLE CONDITIONS ON MOST INDIAN RESERVATIONS WOULD BE THE FORMAL DESIGNATION OF A MEMBER OF THE WHITE HOUSE STAFF WHOSE PRIMARY RESPONSIBILITY WILL BE ISSUES AFFECTING AMERICAN INDIANS. THIS DESIGNATION WOULD SEND A SIGNAL THROUGHOUT THE INDIAN COMMUNITIES OF YOUR DEDICATION TO AMERICA'S FIRST INHABITANTS.

IN CLOSING, WE WOULD LIKE TO REFER TO A MOST APPROPRIATE DECLARATION IN YOUR INAUGURAL ADDRESS: "GREAT NATIONS, LIKE GREAT MEN, SHOULD KEEP THEIR WORD". THIS WAS FIRST SAID BY SUPREME COURT JUSTICE HUGO BLACK IN HIS DISSENTING OPINION IN FEDERAL POWER COMMISSION V. TUSCARORA INDIAN NATION, 362 U.S. 99 (1969). YOUR WORDS ECHO AMERICAN VALUES AND LEGAL TRADITIONS THAT GO BACK TWO CENTURIES."

[END OF SUMMARY OF LETTER]

AS WAS TRUE DURING OUR FIRST HEARING, WE ARE NOT EXAMINING DOCUMENTS RELATING TO AMERICAN INDIAN LITIGATION. RECENTLY, REPRESENTATIVES OF THE SPECIAL COMMITTEE MET WITH REPRESENTATIVES OF THE DEPARTMENT OF JUSTICE TO DISCUSS ACCESS TO LITIGATION FILES AT THE DEPARTMENT OF JUSTICE. THE DEPARTMENT OF JUSTICE RETAINS THE BULK OF THE PERTINENT CASE FILES OF INTEREST TO THE SPECIAL COMMITTEE SINCE IT ACTS AS THE ATTORNEY FOR THE DEPARTMENT OF THE INTERIOR. ALTHOUGH THE DEPARTMENT OF JUSTICE CONTINUES TO DENY ACCESS TO ONGOING CASES, IT HAS AGREED TO PROVIDE CERTAIN MATERIALS IN CLOSED FILES. IT HAS NOT, HOWEVER, AGREED TO PROVIDE US WITH ANY DOCUMENTS REFLECTING "PREDECISIONAL RECOMMENDATIONS" IN THOSE CLOSED FILES. THESE MEMORANDA ARE THE MOST RELEVANT AND THE MOST CRITICAL DOCUMENTATION FOR THEY PROVIDE THE MOST PERTINENT, MOST CONCISE OVERVIEW OF HOW LEGAL DECISION MAKING IS CARRIED OUT AT BOTH THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF THE INTERIOR.

AS A CONGRESSIONAL COMMITTEE, WE HAVE THE DUTY TO INQUIRE SO THAT WE CAN PROPERLY OBTAIN INFORMATION IN ORDER TO LEGISLATE WISELY AND EFFECTIVELY.

WE WILL BE DISCUSSING WITH THE DEPARTMENT WHETHER WE CAN GET ACCESS TO THESE ESSENTIAL CLOSED CASES DOCUMENTS AS WELL. SOME PROGRESS HAS BEEN MADE BUT WE ARE HOPEFUL THAT EVEN MORE PROGRESS CAN AND SHOULD BE MADE IN AN EXPEDITIOUS AND FORTHCOMING MANNER.

AND, NOW, IT IS MY HONOR TO INTRODUCE OUR FIRST PANEL.

STATEMENT BY HAROLD R. TYLER, JR.
OF PATTERSON, BELKNAP, WEBB & TYLER
NEW YORK, NEW YORK

Before the Select Committee on Indian Affairs of the Special Committee on Investigations, United States Senate

February 23, 1989

My name is Harold R. Tyler, Jr. For the past 12 years, I have been a member of the firm of Patterson, Belknap, Webb & Tyler in New York City. Prior to my present professional association, I was the Deputy Attorney General of the United States in 1975 and 1976. From 1962 to 1975, I spent thirteen years as a United States District Judge for the Southern District of New York. Prior to that, I was an Assistant Attorney General of the United States in 1959 and 1960 in charge of the Civil Rights Division of the Department of Justice.

As this Select Committee is aware, fair and proper representation of the Indian tribes and individual Indians before the courts and other agencies of government is a difficult but important subject. Such experience as I have in this area, which is relatively modest, came when I was the Deputy Attorney General of the United States just after the federal government had gone through the experience of the problems at Wounded Knee. In 1975 and 1976, moreover, there were concerns on the part of the White House and the Department of Justice as to how to fairly and effectively represent the Indian tribes so as to accommodate their legitimate interests and convey to the tribes that the federal government was endeavoring to do so in good faith.

This Committee, of course, is aware of certain of my correspondence with the Department of the Interior and Counsel to the President in July, 1976. Actually, as I recall it, this was correspondence of the kind which I had had with other Departments and Agency heads expressing the concerns of the Department of Justice about divided litigation responsibility in our courts. The correspondence with the Interior Department, however, did deal with such issues as the practice of bifurcated briefs submitted to the courts by the Justice Department and the Interior Department dealing with, among other matters, Indian problems. Because of complaints from the courts and some of the litigation divisions of the Department of Justice, we in Justice gave some consideration to abandoning the policy laid down in 1972 of bifurcated briefs and submissions to the courts. My recollection, however, is that the Department of Justice, prior to the end of the Ford Administration on January 20, 1977, did not abandon such a policy and practice.

Over the passage of years, as a private citizen, I have come to the view that, as expressed in my letter to this Committee under date of November 2, 1988, the peculiar interest of the United States government in Indian Affairs may well set this issue apart for special consideration.

I have read the testimony before this Committee of Bradley Patterson, Louis Claiborne and others. In particular, I am in sympathy with the views of Mr. Claiborne that there be a special office somewhere in the Department of Justice assigned to the task of concerning itself with legal representation of Indian tribes and individuals. I would also agree with a similar recommendation made by Mr. Claiborne and perhaps others for a separate "Indian Trust Office" in the Department of the Interior. The difficulty, of course, is that one is reluctant to suggest that additional Assistant Attorney General and/or Assistant Secretary level positions be established or that there be another layer of bureaucracy within either Justice or Interior unless there are very good reasons for such to be put in place.

One possibility in the Department of Justice is to emulate a decision of that Department in 1975 by Attorney General Edward H. Levi to establish the Office of Professional Responsibility which at the time was placed within the offices of the Deputy Attorney General without creating a new Assistant Attorney General position. Today, that office continues to flourish with a small number of lawyers to perform a separate function from those of any other component or division of the Department of Justice. Perhaps something similar could be worked out for a Special Office of Counsel for Indian Affairs which was not under the jurisdiction of the Lands and Natural Resources Division in Justice. I should emphasize the potential importance of supervision of either the Attorney General or the Deputy

Attorney General, or both, in order to demonstrate a commitment at the highest levels of the Department of Justice to be supportive of such a component.

As Mr. Claiborne and others have pointed out, we are all aware that in recent times, many of the Indian tribes and individual Indians have been able to hire private counsel to represent their interests, not only in state litigation but before federal courts and agencies. My understanding, however, is that to date, the ability of the various tribes to hire and pay for competent counsel varies greatly throughout the country. Moreover, even where competent counsel can be obtained and adequately paid, there is no substitute for an independent counsel operation within the federal government such as suggested hereinabove to assist in adequately bringing to the attention of departments and agencies as well as the courts the peculiar interests of the Indian tribes and individual members thereof. Put differently, the whole subject is too important to leave entirely to the happenstance that competent counsel can be privately retained and afforded by the Indians; further, Indian interests must also be served by federal government lawyers even where private lawyers are also available to Indian tribes.

Statement By Erwin N. Griswold
of Jones, Day, Reavis & Pogue, Washington, D.C.
before the Select Committee on Indian Affairs
of the Special Committee on Investigations,
United States Senate
on February 23, 1989

I appreciate the opportunity to appear before this Committee on the problem of the representation of Indians before the courts and other agencies of government. This is an important subject. It is also one of considerable difficulty, and worthy of careful study.

My experience in this area came largely during the six years -- 1967-73 -- when I was Solicitor General of the United States. Although it is now eighteen years or more ago, I still remember one instance in particular, though the details are not wholly clear in my mind. A case came to my desk involving water rights of an Indian tribe in California. The question was whether a petition for certiorari, should be filed in the Supreme Court of the United States. Through the Lands Division of the Department of Justice, I received two letters from the Interior Department. One of these was from the Assistant Solicitor for the Bureau of Indian Affairs. It recommended that I support the Indians. The other came from the Assistant Solicitor for the Bureau of Land Management. It recommended that I oppose the position of the Indians.

With these conflicting recommendations in hand, as I recall it, I called the Solicitor of the Interior Department on the telephone, and asked him what the recommendation of the Interior Department was. The response that I received was: "You have it." When I observed that what I had was two conflicting recommendations, there was no helpful answer. It seemed to me that this left the matter in my hands, and, as I recall it, I filed a paper with the Supreme Court in which the position of the Indians was supported.

I had another experience in connection with the case of United States v. Mason, 412 U.S. 391 (1975), before the Supreme Court. That case involved the question whether property left on the death of a restricted Osage Indian in Oklahoma was subject to the Oklahoma inheritance tax. There had been a previous decision of the Supreme Court in West v. Oklahoma Tax Commission, 334 U.S. 717 (1948), which had upheld the validity of the state tax in such cases. Relying on the earlier decision, officials of the Interior Department paid the tax. The executor of the Indians' estate then sued the United States in the Court of Claims, contending that the payment of the tax had been a breach of trust. The Court of Claims reached the conclusion that the West decision would no longer be followed, since it had been undermined by subsequent decisions of the Supreme Court. On this basis, the Court of Claims held that the payment of the tax was improper, and that the United States was liable to reimburse the estate of the deceased Indian.

In seeking review of this decision by the Supreme Court, I was aware that there was a conflict of responsibilities. It was my duty to represent the United States in defense of the claim made against it. It was equally my duty to support the position of the Indians, since the United States, by law, was trustee for the Indians.

This could have been handled by seeking outside special counsel to represent the Indians. However, the estate was a party to the case, and was represented by counsel. Moreover, the question at issue -- namely, the continuing validity of a previous decision of the Court -- was peculiarly within the ken and power of the Supreme Court. Accordingly, in representing the United States, I filed a brief which was divided into two parts. The first part supported the propriety of the payment of the tax. Then there was a clear break in the brief. The final segment of the brief supported the position of the Indians. When it came time for the oral argument, I followed the same course. I advised the Court that the first half of my argument would be in support of the United States, and that the second part of the argument would be in support of the Indians. Again, I made a clear break between the two parts of the argument. No question was raised by the Court about this method of handling the case.

The decision of the Court was in favor of the United States, supporting its action as trustee in paying the Oklahoma tax.

Similar problems arose in several other cases. It was apparent that there was a real problem about the representation of Indians in the courts, and before state and federal administrative agencies. I was particularly troubled by an effort I made on behalf of the Pyramid Lake Indians. This involved a dispute as to water rights in waters of the Truckee River, flowing through California and Nevada, and into Pyramid Lake in Nevada. In an effort to resolve the problem efficiently, I authorized the filing of an original suit in the Supreme Court. I recognized that the Court could not be expected to determine individual water rights, but I thought that the Court, through a Master, could determine the proper allocation of water between (a) California, (b) Nevada, and (c) finally, the Pyramid Lake Indians. It would then be possible for California and Nevada to make allocations among the individual claimants in each state, while preserving the rights established for the Indians. Unfortunately, as I saw it, the Supreme Court refused to allow leave to file the bill of complaint. United States v. Nevada, 412 U.S. 534 (1973). The result was long and complex litigation, extending over ten or twelve years, in the lower courts, at great expense. I could not escape the feeling that there should have been a better way to work this problem out, though I fully recognize the complexity and difficulty of the situation. Part of the problem arose because of conflicting objectives within the Interior Department.

It is, of course, these conflicts which are the root of the difficulty. Although it seemed natural to have Indian affairs come within the responsibility of the Interior Department, the pressures there are often intense, and the experience of the years seems to show that the rights and aspirations of the Indians are often not fully advanced and recognized.

The problems are surely not easy to resolve. It is not appealing, for example, to think of the establishment of a whole new bureaucracy devoted solely to the protection and advancement of Indians. On the other hand, there is reason to think that the Indians should have more vigorous support than they sometimes have had in most of this century.

I welcome the interest which this Committee has taken in this problem, and hope that it may develop useful and effective means for the better protection of rights and interests of our Indian citizens.

TESTIMONY OF
WILLIAM P. RAGSDALE
BEFORE THE
UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
SPECIAL COMMITTEE ON INVESTIGATIONS
FEBRUARY 23,1989

Mr. Chairman, thank you for the opportunity to appear today to discuss Indian policy and allowing me to comment.

BACKGROUND

I need to explain at the outset that my testimony has not been reviewed for clearance by the Department. Therefore, my testimony represents my personal view and may be subject to clarification by the Department.

I am a career employee; my insight and perspective are based on the sum of my experience in the Indian Bureau. When I agreed to transfer to the headquarters office from the field in August of 1987, it was with the understanding with my former boss, Ross Swimmer, that I would assist him in oversight and gradually assume the day to day operations of the Bureau so he could focus more on legislative initiatives and policy formulation.

The insight I have is based on my background and experience. I am (42) years of age, of one-fourth degree Cherokee Indian blood and registered as a member of the tribe. I have (22) years of federal service; (19) in the Indian bureau and 3 years in the United States Marines.

I come from the ranks of the Indian Bureau. I commenced working as a laborer; I worked in boarding schools of the Bureau during the summer months while I was attending college. After I graduated from college in the spring of 1968, I was employed as a teacher and taught history and coached all sports until I entered the Marines in October of 1969. After my military service in 1974 I worked as a tribal government specialist and was later appointed in 1977 to serve as an agency superintendent on the Northern Ute Reservation located in Utah. Since then I have served in various positions and now temporarily, as acting Assistant Secretary.

I tell our employees that service in the Indian Bureau is a noble profession. It requires dedication, a belief in mission and understanding that the reward for service comes from self satisfaction and perseverance to try and make things work better not from public acclaim. If one cannot accept this fact then service in the Indian business will break one's heart and spirit.

BIA employees are naturally hurt by the criticism of the institutional BIA and are often blamed for systemic failures not of their making. The times of despair and frustration have been more than compensated for, and balanced by the successes of individual achievements and gratitude by the Indians we serve. You do not hear a great deal about those who do their jobs with a great deal of dedication and diligence. I have found however, for most employees this to be the rule not the exception. Most "do not get along to go along" or work in the Bureau because they are insensitive to the needs of Indian people. I also wish to point out the fact that Bureau leadership is almost totally Indian and of the 12,000 employees in the Indian Bureau, 80 percent are Indians.

On a personal note, my family has provided me with their support. I have been fortunate that they have been willing to sacrifice their wants and needs to allow me to pursue this endeavor. My family and many like it understand what it is like to live on an Indian Reservation. While it is true that employees had better develop a tough hide to withstand the criticism which seems to point at the Indian Bureau for every scandalous thing ever perpetrated against Indians and while the Indian Bureau makes a convenient place to lay the blame, it is not a fair categorization. Okay, I got that off my chest. Let's go on with why I am here.

My experience gives me broad perspective for the views I will share with you today.

WHAT IS THE PURPOSE OF INDIAN AFFAIRS ADMINISTRATION?

Senator McCain quoted the words of Felix Cohen at the start of these hearings. As I watched the hearing on C-SPAN that evening I was reminded of the origin of the quote. Years ago I read an account of the era when Mr. Cohen served in the Department of Interior. The miner's canary quote was taken from a periodical which was published after World War II and Mr. Cohen was retired from his Interior post having championed Indian rights and tribal self-government from both outside and inside the government. The results of the Nazi holocaust had been realized by the civilized world and Mr. Cohen, a person of Jewish faith himself, advanced his belief that the essence of the moral health and character of a nation could be measured by the way it treated its minorities. The rights of the dominant society are more likely to be protected if only because they outnumber the minority. It is the minority who must by necessity rely on the goodwill of the dominant society to ensure their human rights are protected.

In the old mining days a canary was used to determine the quality of the air the miners were breathing when at work in the mines. The canary was the first to detect poison gas and provide the miners with warning that their lives were in danger.

Thus Felix Cohen said: "Like the miner's canary, the Indian marks the shifts from fresh air to poison gas in our political atmosphere; and our treatment of Indians even more than our treatment of other minorities, reflects the rise and fall in our democratic faith...." The history of the nation's dealings with Indians provide insight into the Federal-Indian relationship.

OVERVIEW

Federal-Indian relations commenced when Indians controlled this country. Indian Tribes were required to cede to the United States vast amounts of territory and resources. The nation in turn is obligated to protect the resources remaining in Indian ownership and continue the federal relationship with governments of the Alaska natives and Indian people. These people and their governments were described by the Supreme Court as "...domestic dependent nations..." possessing all the attributes of sovereignty that have not been extinguished by the United States.

Once Indians were the dominant society of this country; today they represent less than one-half of one percent of the nation's population. The United States has a fiduciary responsibility to preserve, protect, and enhance Indian property held in trust for Indian beneficiaries. The body of the trust is approximately 54 million acres of Indian land, 1.75 billion dollars of Indian revenues, and undetermined but extremely valuable amount of resources such as water, minerals, timber, fish and wildlife resources. The Indian governments have a significant role in determining how these resources are to be utilized.

To extend the miner's canary analogy, the executive and legislative bodies share responsibility for maintaining a political atmosphere in which the judicially confirmed fiduciary obligations of the United States to Indians and Alaskan natives can be fulfilled. In Indian affairs, the courts have played a critically essential role in the interpretation of the meaning and on occasion have directed enforcement of Indian rights. Because of this unique governmental relationship and trust and fiduciary responsibilities, access to legal representation is a critical requirement for the Bureau in carrying out its responsibilities

WHAT ARE THE RESPONSIBILITIES OF THE UNITED STATES?

The responsibilities of the United States are based on public policies recognizing; (1)self-determination and self-governance of more than 500 Indian tribes and Alaska native governments with government to government relationships and, (2)the responsibility to execute the fiduciary obligations (trusteeship) in behalf of the Indian beneficiaries, individuals and tribes. These public policies regarding Indian affairs exist in a content, particularly in the Interior Department, of differing and occasionally competing interests affecting the natural resources of the nation and those owned by Indians.

WHAT IS THE MISSION OF THE INDIAN BUREAU?

The Indian bureau is a primary agent of the government to ensure the obligations of the government are executed recognizing self-determination and trust policies. Therefore, the mission of the Indian Bureau and the attorneys who represent it, is to ensure that the federal responsibilities are executed with care and diligence. In my view, all federal agencies share the fiduciary obligation.

Appropriate legal representation of the primary agent, the Indian Bureau, becomes exceedingly important given the complexity of Indian law and the dual government to government responsibilities and trusteeship of the United States to protect Indian rights when other interests cross-cut.

HOW IS POLICY AFFECTED BY POLITICAL PROCESS?

The political process provides the public policy for the Executive Branch to implement. Indian law however, is not precise in most instances. The policies of self-governance and trusteeship create tension between the Indian beneficiary and the United States. Conversely, those same policies cause tension and occasional conflict with other federal agencies and with state and local governments and the policies governing federal relations with those governments.

Nonetheless, the United States has an affirmative responsibility to advance or protect the Indians' resources. Although all Federal agencies have the responsibility to respect Indian rights, it is usually left to the Indian Bureau to ensure the obligations are kept. The Bureau must rely on its funding and manpower resources to fulfill these requirements which compete with other services the Bureau is obligated to perform, such as education and social programs. Strong legal representation is essential if Bureau decision makers and the Assistant Secretary for Indian Affairs are to rationally set priorities and balance against budget targets all program interests for which the Bureau is responsible. These range to almost every service that any government provides except an authorization to make war and provide for a common defense.

Budgetary decisions are made within the context of how far the resources can be stretched to meet all obligations. Resolution of rights of Indian tribes to natural resource for example, usually involved other programs and agencies of the Interior Department, such as the Fish and Wildlife Service and the Bureau of Reclamation. Decision making in those cases is complicated by politics and constituents' interest can be adverse to the Indian program.

Resolution of claims to natural resources involve federal, tribal, state, and local government as well as private interests. These claims are often settled or resolved by negotiations, legislation, or court decisions. When the claims are not resolved or the interests not enforced, Indians resources or rights may be compromised. The history of the Pyramid Lake controversy and the development of the Central Utah Project and its relationship.

In some cases, pressures are brought to bear to restrict or compromise the exercise of Indian rights for other interests. I am not suggesting anything sinister, it is simply a fact of life and a part of the American political process. At the Washington level, non Indian constituents usually circumvent the Indian Bureau due to the perception that the Bureau will favor the Indian position. Of course, those constituents are generally more influential than Indian representatives insofar as access to political power.

Throughout our history it has been the nation's court system which have upheld the rights of Indians when the Congress or the Executive has failed to perform the obligations properly. For this reason, there is the need for effective legal representation within the Executive Branch to avoid unnecessary litigation and to initiate litigation in the Indians behalf that is essential to the maintenance of their rights.

LEGAL REPRESENTATION

Legal representation is critical to policy formulation and implementation for the Assistant Secretary and officials throughout the Bureau. The Solicitor's Office in Washington provides legal advice to the Indian Bureau clients primarily through the Associate Solicitor-Division of Indian Affairs. In the field the advice is provided through the Regional and Field Solicitors offices located nearest the Bureau client.

I have personally relied on the Phoenix Field Solicitor's Office (when I was Assistant Area Director for Trust Responsibilities), the Salt Lake City Regional Office (when I was a Superintendent) and the Tulsa Regional Office (when I was an Area Director). As Deputy for Operations and acting Assistant Secretary I am served by the Washington Solicitor's Office Division of Indian Affairs. On occasion, when I was a field employee, I was provided service directly by the Washington Solicitor's Office on special issues such as the implementation of the Ak-Chin Water Settlement Act and on other issues of national significance.

My general evaluation is that the legal services provided were of good quality and advocated the enforcement of the government's fiduciary duties to Indians. In other words, the general disposition of the government attorneys serving the Bureau of Indian Affairs has been to advance the government's programs on behalf of Indians and to protect Indian rights.

Indian law is complex and difficult for many to understand. The idea that there is a group of people in this country who have a special body of law that governs their lives differently from other Americans probably comes as a great surprise to people. That is the situation for many people. Those laws are intended to benefit Indians because of their unique status as the original occupants of our continent. When Department officials act to implement the Indian and other programs created by Congress, we need thorough, straightforward advice about how our program activities comply with the law. It only is a recent experience that I felt the legal services when blended with other interests did not on balance, favor Indian advocacy or allow much discretion by the Secretary to pick from an array of options. In fact it would seem with some cases there was a tendency to chose more narrow options which tended to limit Indian rights to a lesser extent than I felt was necessary.

This takes me to my final points regarding protecting and enhancing Indian trust assets and the preservation of rights.

SETTLEMENTS AND SALVAGING THE BEST FOR INDIAN INTERESTS

One does not get very far by simply advancing the Indian position on the basis of history or on the basis of morbid statistics which are used to justify social and health programs. When Indian interests are legally supported by our attorneys, the tribes own attorneys have ably demonstrated their ability to negotiate. Water settlements often dovetail with development desires of the non Indian majority. Settlements are the most realistic course to insure that Indian water is finally developed, provided the legal position is heard and that it is realistic and fair. Without belaboring the point it is doubtful that enough appropriations will ever be made available to finish the Indian irrigation developments already authorized, but not yet completed. For example, the Colorado River Indian Irrigation Project is the oldest federal irrigation project (1867) in the United States predating the Bureau of Reclamation's first irrigation project in the west. It is still not complete.

My final point is systematically, care must be taken to ensure the Bureau has full access to legal representation that allows the maximum development of the Indian position on cross-cutting issues. Organizational or legislative improvements, however, cannot replace individuals in key positions who understand the unique relationship between Indians and the federal government and who work to ensure full representation of Indian positions.

CONCLUSION

I have attempted to provide this committee with my insight of policy formulation and legal representation from my perspective. Undoubtedly, you may want to explore this further for the purpose of discussion. Of course the Administration reserves the right to make additional statements regarding the testimony I have just given and will respond more formally to any proposed changes in the organizational process or legislative changes. I am scheduled to be back next week to testify on other topics the Committee has reviewed.

TESTIMONY OF
ROSS O. SWIMMER
BEFORE THE
UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
SUBCOMMITTEE ON INVESTIGATIONS
FEBRUARY 23, 1989

The following testimony is offered by Ross O. Swimmer, attorney with the firm of Hall, Estill, Hardwick, Gable, Golden & Nelson, Tulsa, Oklahoma. Mr. Swimmer is the former Assistant Secretary for Indian Affairs and was Principal Chief of the Cherokee Nation of Oklahoma from 1975 to 1985.

Thank you for allowing me the opportunity to appear before you today. I have followed these proceedings closely and am encouraged by the committee's willingness to explore all areas of Indian problems. My testimony will focus on the decision-making process within the Department of Interior, the legal counsel available, and the conflicts inherent in the federal role of trustee.

Although I was extremely reluctant to accept the position of Assistant Secretary, I was convinced I could help The Bureau of Indian Affairs become more responsive to tribal needs. I recognized that to achieve this goal the Assistant Secretary had to be on an equal footing with the other assistant secretaries, and have the backing of the administration to move policy issues forward. When I was confirmed for the position of Assistant Secretary in December, 1985, I had a very clear understanding with Secretary Hodel that Indian policy would be cleared with me before being acted on within the Department. Virtually any issue that affected Indian policy was required to be brought to my attention, even when it primarily would affect another area of interest within the Department. In addition, I asked for an early meeting with the President to discuss his policy of self-determination and how I expected to implement it. I believe I was the only Assistant Secretary to have such a meeting.

During my first year, we were quite successful in advancing Indian issues on several fronts within the Department. Our budget remained stable and actually had slight increases from year to year. The landmark bingo case, Cabazon v. California, was argued in the U.S. Supreme Court and a decision favorable to the tribe was issued, primarily because of the early support from Secretary Hodel which was cited by the tribe in its argument before the Court. Building on the Ak Chin water settlement early in the administration, we moved forward a dozen or more Indian water cases. Support was also strong for tribal member exemption from taxation for fishing income, for issuances of industrial development bonds for tribes and other sovereignty issues including the right of tribes to tax and exercise jurisdiction over their territory. My policy was always based on a concept that a strong tribal government, honestly operated and accountable to its people, would be the best vehicle to improve living conditions in Indian country and assure a better future for Indian people. Without question, Secretary Hodel was very supportive of my efforts in this regard. Nor could I have made this kind of progress without the support of the attorneys in the Indian division of the solicitor's office.

When I began my tenure as Assistant Secretary the attitude within the solicitor's office was one of openness and a willingness to be available to discuss any issue. In part, this was because they were accustomed to being called on often by the

Bureau to do its work for it, and in particular, helping the Bureau draft regulations, position statements and even letters. While these kinds of things were not strictly legal, the work did give our solicitors a unique knowledge about Bureau operations. I did advise my staff that they were burdening the solicitor's office with work their own staff should be doing. We were successful in reducing the non-legal work of the solicitor's office to some extent, but, in truth, the Bureau often lacked the needed talent to do the kind of writing that was needed.

Tim Vollmann was Associate Solicitor for Indian Affairs when I arrived at the Department. I believed then, and do now, that Mr. Vollmann is a very knowledgeable attorney in Indian law. Approximately a year after my appointment, Mr. Vollmann was transferred to Oklahoma as Regional Solicitor. I cannot think of anything that has been more important for Oklahoma tribes than having Tim Vollmann become the Regional Solicitor. Unfortunately, his absence from Washington, D.C. left a vacuum in the central office, which resulted in less interaction between the Solicitor's office and the Bureau. Although some good attorneys were brought in to replace Mr. Vollmann, these new attorneys had virtually no Indian law experience.

Due to budget constraints, Mr. Tarr also asked his staff attorneys to reduce their travel to Indian meetings and confine their work to legal matters to the extent possible. On occasion, I have called the Solicitor's office only to be told that they had been instructed not to get involved in policy or administrative matters. They were to treat the Bureau as a client and be responsive when asked for specific legal advice. I can understand the need to control the volume of work in the Solicitor's office, but this policy has made the solicitors less accessible for sorely needed advice. At one point, I felt the need to do my own legal research and develop a position paper because I knew that the solicitor disagreed with the Indian position and I could not compromise the attorneys in the Indian division by asking them to develop a legal strategy for our position. I have also called on attorneys from the Justice Department to help support an Indian positions to give greater emphasis to the Indian position.

Both as Assistant Secretary and now as an attorney facing the issues in Indian country, I was and am now very concerned about the legal representation for Indians within the Department. Unfortunately, there is less sympathy for Indians in the areas of Indian sovereignty, water rights and state conflicts because of their success in advancing these issues. At one point, the Secretary told me he was being asked by some western water and land interests to have the Department pay for legal counsel to defend against the Indians. There is no question that legal scholars, in total fairness, can take either side of the issue in most cases. However, our role as trustee for the Indian interests differs greatly from that of our role as owner of federal land. As trustee we are acting in a fiduciary capacity. As land owner we may act in a way that supports a federal policy agenda which may not be allowed in our trustee role. Often, court decisions use the words "fiduciary relationship" and "trustee" in describing the role of the federal government in Indian affairs. We are also reminded that courts have directed that treaties and acts of Congress must be interpreted in ways that are most favorable to the Indians. The reason is obvious.

As mentioned earlier, there are some people in our society who believe Indians have recovered enough. We are all familiar with such slogans as "equal rights for everyone", and the sale of "Treaty" beer to help support anti-Indian political lobbying. Unfortunately, there is no amount of money, sovereignty, fishing, hunting, water rights or tax breaks that will compensate for the fraud and injustices committed against Indian people and Tribes. However, we must not continue these injustices by failing in our trustee role. Nor can we assuage guilt simply by doling out huge sums of money to irresponsible bureaucrats or tribal governments. We know our social programs are a failure and, so far, Congress has been extremely slow to act to improve delivery of these programs. One thing we can do and that we owe to the Indians of today is to perform our role as trustee in a manner that honors the memory of those Indians who were treated so terribly in the past.

We can perform our trustee role only with the support of our solicitors and the attorneys in the Justice Department who are in many cases compelled by law to represent Indian tribes. Often, these attorneys must argue positions on behalf of Indians that contradict policy objectives of a particular Administration.

Although I am not personally familiar with the Solicitor's manual, I understand it contains a provision that the Solicitor should refrain from policy making and provide an array of options for the policy makers when possible. Another general policy has been not to foreclose Secretarial decision making. In the case of the Sandia Pueblo decision, both rules were dismissed. The Solicitor, after two years of evaluation, first supporting the tribes position but ultimately ruling against the tribe, decided not only to advise the Secretary that the facts presented only one interpretation but went so far as to conclude that the Secretary was barred by law from a simple ministerial act of adjusting boundaries between Indian and federal land.

Although the decision might pass a reasonableness standard, it certainly did not do much to support the two principles I have discussed. Nor can it be said to be a decision giving deference to the Indian position. I personally disagreed with the position on the law foreclosing secretarial decision making authority, but the Solicitor is the final word on a legal interpretation for the Department. Not even the Secretary would be able to challenge such a decision except with great reluctance. As a result of Sandia and other Indian cases, I understand the Solicitor is now having many opinions involving Indian issues reviewed by attorneys in his other divisions. This may result in legal opinions being expressed that contradict positions now being argued in pending cases.

Similar problems have arisen in water rights cases, jurisdictional disputes and claims cases. As a trustee, I believe we have to be proactive and assert the Indian position whenever possible. If we wait until the case is framed by others and are reactive to someone suing a tribe, we may very well lose the advantage. As an example, many years ago, our predecessors were remiss in not advocating for full water rights for the Pyramid Lake Paiute Indians. As a result, the tribe lost its opportunity to assert those rights and they have since been at a significant disadvantage with competing interests in the current contest over water rights. Our earlier failure to assert their rights is often used by others in the Department and elsewhere today to oppose the tribe in its efforts to recover water, to maintain the lake level of Pyramid Lake, and prevent loss of the endangered Cui Ui fish.

Another conflict that often keeps the Bureau and Department from being proactive is the Office of Management and Budget (OMB). Money is not the answer to all problems on the reservation, but in most instances it is useful as a resource to reach settlement in Indian trust dispute issues. The question most often asked is whether to push the tribe into litigation in which case the claim will be paid out of the judgment funds of the federal government after years of litigation, or to negotiate, thereby saving time and legal expense, but having to take the settlement funds out of the Bureau's operating budget.

If OMB refuses to allow an increase in the budget to finance settlements, the tribes are left with no alternative to litigation. The worst scenario is to encourage tribes to negotiate and settle, then refuse to put money in the budget to pay the federal share. It is also wrong to expect the money to come from the operating budget of the Bureau, which, in essence, is no more than asking tribes to pay for their own settlements.

Several things can be done to remedy some of these deficiencies. First, there should be a vehicle for Congress to assure itself that those in the Department who should be advocates for Indian trust issues will be. This can be done by amending the confirmation process. Presently, a conflict of interest exists between the Senate Energy and Natural Resource Committee and the Senate Select Committee on Indian Affairs. Senate Energy is reluctant to give tribes recognition as full governments while Senate Select is a strong advocate of sovereignty. This was most apparent in the debate on the Animus-LaPlata Water Legislation. Second, Congress needs to deal with the funding issue and not charge settlements to the Department's budget just as judgments are not charged to the budget. Third, tribes should always be involved in decisions that might affect their trust property and no decision should be made by the Solicitor that is adverse to a tribe's interest until the tribe has been fully informed and had an opportunity to have outside legal counsel discuss the issue with the Solicitor before the decision. These three things can be done now with very little effort from Congress or the administration.

Other more involved solutions which can be discussed in detail when your committee reaches that point, include a reduced Bureau of Indian Affairs, formation of a trust agency outside the Department of Interior, direct tribal funding, reformed education program, tax incentives and development initiatives that will cost money now but will, in the long run, eliminate poverty on the reservation. Also we must have tribal government that is responsive to its citizens instead of Washington. Criminal laws should be passed to reduce tribal corruption and the Congress and staff should refrain from micro-managing issues on the reservations. Laws must be passed assuring Indian people that their civil rights are protected and finally we must address problems such as fractionated ownership of land that is making many allotments unusable by descendants of the original allottees.

Statement of Ann McLaughlin
before the U.S. Senate Select Committee on Indian Affairs
Subcommittee on Investigations
February 23, 1989

I want to thank you for inviting me to testify before you. I commend you, for the work you are doing is essential. If this Nation's Indian people are to escape the cycle of poverty that continues to strangle their self-determination and economic development, the management of the Federal trust responsibility needs tremendous improvement.

You have requested that I describe my experiences with managing Indian trust responsibility while at Interior. To understand how the trust responsibility fits with other programs at Interior, I often tell a story of an apocryphal river recently discovered in the western states. The question of what to do with this recently discovered river was brought to the Secretary. Reclamation wanted to divert it and grow high-value crops with the water, the Fish and Wildlife and National Park Services wanted it left in its pristine condition, the Geological Survey wanted to measure and study, while Bureau of Land Management and Minerals Management Service wanted to lease the bed of the river for mineral, oil and gas development. The controversy was resolved when the Solicitor opined that the river was owned by Indians -- and the Indians hadn't decided what they wanted to do with this resource.

This dilemma of agencies in the same Department having conflicting mission responsibilities is unique to Interior. In other parts of the Federal government where I have worked, the agencies in a Department have complimentary objectives; and the challenge is not what to do but how to accomplish the mission in the most expeditious fashion. At Interior, effective management requires identifying and surfacing the conflicts to assure that decisionmakers have the full range of viewpoints on an issue. In many cases we encountered serendipity where, through the dialogue process, we found consensus.

To have a forum for these discussions, I created the Water Policy Working Group, comprised of the Assistant Secretaries, the Solicitor, and chaired by the Under Secretary. We used water because it is an integral part of so many of the cross-cutting conflicts within Interior. This group met regularly and dealt with such issues as Dam Safety, Ground Water Policy, Indian Water Claims Settlements, Efficiency of Water Use, Wetlands Policy and the National Water Quality Assessment.

For the group to work effectively, it was essential that the respective Assistant Secretaries assume an advocacy role on behalf of their constituencies. I understand that you heard this morning from Ross Swimmer, Tim Vollman and others. I am pleased to report that in the Water Policy Working Group meetings, Ross was an able, effective, and often persuasive spokesman for the Indian viewpoint, a fact that some Indian people don't recognize. Also, Tim Vollman and his staff provided the legal analyses that resulted in the Water Policy Working Group being what I consider to have been "an honest broker" for Indian water issues.

I want to dwell on this point of confrontation for a moment because it is very important to the deliberations of this Committee. Human nature leads us to avoid pain. The encounters in the Water Policy Working Group were often painful. I have been in four Departments, and career service people are eager to help and follow the policy directions of political appointees if those appointees communicate with them where they are trying to go. So, reaching down into the bureaucracy to identify, surface, and resolve those cross-cutting conflicts was, in my estimation, the key to our successes in Indian Water Claims Settlements and in other areas. If the lead responsibility for addressing a cross-cutting issue is delegated to an Assistant Secretary whose constituency has a stake in the outcome, that Assistant Secretary will avoid the pain of confronting the enemy. The resultant outcome will not represent fairness, equity, or possible consensus.

With Indian issues, the lead Assistant Secretary concept results in far more pernicious discrimination. This is because the political maturity of the Indian peoples is not on a par with the sophisticated lobbying we see from other constituencies. When an energy company, conservation organization, or irrigation district sees their Assistant Secretary failing on their behalf (and they know exactly what is happening) they marshall other political forces to support their cause. Indian peoples don't have the networks, contacts, or political clout to make a difference if their advocate can't get their position to the decision table. Thus, any management approach which does not assure a level playing field and a process for honest brokering will be far more disadvantageous to Indian peoples than to others.

I know you would like to hear about the process we used for Indian Water Claim Settlements. I have with me today Mr. Michael Clinton who was my Special Assistant and managed the Department's Indian Water Claims Settlement Program under my direction. The Salt River, Colorado Ute and San Luis Rey settlements passed by the Congress last year reflect his quiet, adept management of that program. I will have Mike Clinton describe the settlement negotiation process for you in depth in a moment.

However, before I close I would like to share one further perspective. As I thought over what I might say to you today, I pondered the many glimpses of your challenge which I have seen. As an administrator, a generalist, and a participant in the public policy process, I have had a look at the role of government in our lives through many windows: at EPA, in the private sector, at Treasury, Interior, Labor, academia, and now in a non-profit think tank, the Urban Institute. Our focus while I was at Interior was primarily on how to protect Indian natural resources. We hoped that the results would be promotion of tribal self-determination and economic self-sufficiency. My experience as Secretary of Labor suggests that we may have been treating the symptom rather than the problem.

Indian communities have vast natural resources of land, water, minerals, oil, gas, coal and uranium which the Interior Secretary must protect as part of his/her trust responsibility. However little or no attention is given to the more important resource of the unemployed, uneducated, poorly trained, and unemployable labor on Indian reservations. I believe that we should ask how the combined asset base of labor, education, infrastructure and natural resources can be managed to make these communities a productive part of our society.

This Nation is beginning to address, in a period of labor shortages, vastly changing demographics in an aging workforce. Such factors as a slower rate of growth and how to educate and train those who will be in demand need immediate attention. We are proud to say as a nation that we can offer a job to everyone who wants one if they are prepared. As we move to the 21st century, it seems to me that the challenge of educating and preparing our workers for the jobs of the future is as important on Indian reservations as it is in our non-Indian labor markets. I encourage this Committee to consider adapting the existing knowledge of labor market management in order to meet the Nation's Indian management goals. I believe this Committee must have more than a natural resources agenda.

Thank you for the opportunity to share my thoughts with you today. I'd be pleased to respond to your questions.

Statement by Michael J. Clinton
before the U.S. Senate Select Committee on Indian Affairs
Subcommittee on Investigations
February 23, 1989

Mr. Chairman and members of the Committee, my name is Michael J. Clinton, and I am Vice President and Washington Office Manager for Bookman-Edmonston Engineering, Inc., a firm that specializes in water resources management. I am a professional engineer registered in the states of Arizona, California, Virginia and Washington, DC. During the bulk of my 25 years of Federal service I was a career employee of the Bureau of Reclamation dealing with water supply, water quality, and water rights management in much of the west. I served as Special Assistant to the Under Secretary for approximately two years prior to joining the private sector in 1987. My testimony today describes the concepts, techniques, and goals used in developing negotiated Indian Water Claims Settlements during the time I worked with Under Secretary Ann McLaughlin.

Basic to the approach was Under Secretary McLaughlin's philosophy that Indian water claims disputes are disputes among neighbors brought on largely by historical actions of the U.S. The 50 or so outstanding disputes include many examples of western rivers where water was implicitly reserved for Indian purposes and was then allocated to non-Indians. Neighbors have been set against each other competing for an over-subscribed water resource across many of the western states. All three settlements approved by the 100th

Congress have elements of this phenomenon. Mrs. McLaughlin sent Departmental negotiators to the bargaining table as facilitators with a strong mandate to build a local Indian/non-Indian coalition that could sustain the settlement through the process of negotiations, legislation and implementation.

I'll give you some personal examples of how this facilitator role worked for the Salt River Pima-Maricopa and Colorado Ute settlements. After commuting to Phoenix for six months of hostile meetings and shuttle diplomacy, it was rewarding to see Indians and non-Indian water users working together to craft what is now the Salt River Pima-Maricopa Settlement. A similar process took place in southwest Colorado. The states and Members of the Congressional delegations provided valuable assistance by encouraging Indians and non-Indians to co-exist. As the coalitions strengthened, the Federal role changed from facilitator to participant. Probably my toughest assignments were to tell the Salt River and Colorado Ute groups that they were far from an acceptable cost share package and to see their unity, that I had helped create, expel me as the Federal representative. They jointly went their own way taking control of the settlement, which the theorists tell me is a sign that the facilitator did a good job.

Cost-sharing on Indian settlements was a most difficult aspect, as reflected by the confrontations we witnessed in negotiations and at the end of the last Congressional session. The Department's perspective was that there was a Federal obligation at least as large as what the United States would spend without a settlement. Further, the Department believed that additional investments were needed on Indian reservations to turn "paper" water rights into "wet" water which could provide livelihoods and economic opportunities for the Indian peoples. We encountered significant opposition within the Administration to this philosophy.

To address this concern, Mrs. McLaughlin opened a dialogue on coordination and funding procedure with staff and policy-level personnel at the Interior, Office of Management and Budget, and the Department of Justice. To that end, a letter was sent in November 1986 from Interior to OMB Director Miller describing the coordination and funding strategies that Interior would use for water claims negotiations. During 1986 there were many meetings with OMB and Justice and no cloture was ever achieved on the subject of an Administration cost-sharing policy. Interior continued to insist on a case-by-case, cost-share approach. OMB continued to insist that the United States should invest no more than its fiscal liability. It is my understanding that those discussions continued through the end of the Reagan Administration without cloture.

During 1986 we had as many as ten negotiating teams operating out of the Department. These were comprised of career staff from the agencies where programs would be affected by a settlement. One problem with the facilitator role for Department negotiators was that very talented engineers, attorneys, and economists had little understanding of negotiating techniques, group dynamics, or group process. To build a cadre of Interior staff for negotiating teams, we retained a contractor to provide necessary training. Interior professionals saw that, like other professions, sociologists have a "cookbook" showing how to facilitate resolution of conflicts. The training was a success, and the techniques continue to be used by those Interior staff involved in negotiations.

The management control on the negotiating teams was handled in the same manner as other Water Policy Working Group activities. My role was to oversee the working of the negotiating teams and bring to the working group issues needing policy consideration. Written and/or oral reports were made at working group meetings. Negotiating team leaders brought forward cross-cutting issues for policy consideration and guidance. In this way, each Assistant Secretary had the opportunity to represent the interests of the various agency constituencies, and decisions reflected that input.

One particular decision of this nature sticks in my memory. The Department was under court order to come up with operating criteria for a Reclamation project, the decision affecting Indian rights, endangered species, and water for farming. For months the issue had been hotly contested among the Solicitor, Fish and Wildlife Service, Reclamation, and Indian Affairs. On a Friday evening at

5:00 p.m., the Under Secretary invited the players, policy, and staff into her conference room for a final decision meeting. Popcorn was provided, and the group was told they would stay until a decision was reached. The Department's objectives were described by the Under Secretary and, much to everyone's surprise, the group found consensus in less than an hour. The stipulations were filed the next week, meeting the court deadline. Behind the scenes during the previous months of argument, the solution had been defined by listening to all sides in the Water Policy Working Group meetings. By hearing the common threads of respective arguments, the Department's objectives were clarified, and the issues needing decision became very narrow. What some called serendipity was, in reality, expertly managed process.

My experience at Interior suggests to me that the tremendous body of talent within the Department is an asset that can be used to resolve many of the Indian water claims disputes in the western states. For that staff talent to be effective, the management of the Department needs to have a process whereby technical and policy issues can be surfaced and resolved quickly. My experience with the Water Policy Working Group suggests that that model worked quite effectively, partly because of the process, but also because of the group management skills of the Under Secretary. I was pleased to be part of the process.

I thank you for the opportunity to provide my insights to the Committee. I also would be pleased to respond to questions as you desire.

Testimony of TIM VOLLMANN, Regional Solicitor, Southwest Region, U.S. Department of the Interior

Before the United States Senate
Select Committee on Indian Affairs
Subcommittee on Investigations

February 23, 1989

My name is Tim Vollmann. I am the Regional Solicitor, Southwest Region, U.S. Department of the Interior. My office is in Tulsa, Oklahoma. I have been employed by the Solicitor's Office since November 1975 when I was hired by Reid Chambers, who was then Associate Solicitor, Indian Affairs, in Washington D.C. I had then been employed for two years as a legal services attorney in Window Rock, Arizona, on the Navajo Indian Reservation. In 1978 I was Special Assistant to Solicitor Leo M. Krulitz. In 1979 I became Assistant Solicitor for Indian Land and Minerals, and in 1983 I was promoted to Deputy Associate Solicitor for Indian Affairs, normally the highest career attorney position in the Division of Indian Affairs. However, in 1984 then Solicitor Frank Richardson asked me to serve as Associate Solicitor. I served in that position until July 1987.

In April 1987 Solicitor Ralph Tarr asked me to go to Tulsa to serve as Acting Regional Solicitor and to review and reform procedures applicable to government trial attorneys appearing in Oklahoma state courts in matters involving restricted lands of Indians of the Five Civilized Tribes. I was asked to do so in the wake of the federal court decision in Austin Walker v. United States, 663 F.Supp. 258 (E.D.Okla. 1987), in which the United

States was found liable for the malpractice of a trial attorney in connection with an Indian oil and gas lease approval proceeding in Creek County District Court in 1983. This was a temporary assignment, but I found the work challenging and rewarding, and asked for a permanent appointment as the Regional Solicitor. In that capacity I am responsible for legal services to most of the Department's offices in the Southwest, including four BIA Area Offices: Muskogee, Anadarko, Albuquerque, and Navajo.

The Subcommittee has asked me to testify about the role of the federal government in pursuing litigation asserting Indian rights to natural resources and self-government. The following remarks are my own, not necessarily those of the Department of the Interior. Rather, they represent my 17 years experience in Indian law, 13 of those inside the Department. As a legal services attorney, I represented Indian plaintiffs asserting voting rights, civil rights, educational rights, and rights to their allotted lands. As a government attorney, I have been actively involved in the assertion of tribal land claims, Indian mineral development, and the assertion of various treaty rights. I am not a spokesman for Indian people and have never claimed to be; but I can contribute to this Subcommittee my experience as a government attorney in the special and sensitive area of Indian Affairs.

Litigation on behalf of Indian Tribes

The federal government, through its legal counsel, has played a critical role for two centuries-- as plaintiff, defendant, and amicus-- in the development of the dynamic jurisprudence of federal Indian law. It is thus not uncommon to see the U.S. Supreme Court ask the Solicitor General for the views of the United States in Indian cases in which the U.S. is not a party. The decision whether to file a lawsuit or an amicus brief in the name of the United States is the prerogative of the Attorney General; and as tribal lawyers well know, the process leading up to this decision is a lengthy one. When an unsettled issue of law is involved in a proposed Indian suit-- a common situation in Indian law-- the Assistant Attorney General for Land and Natural Resources must approve the filing. When a brief in a Court of Appeals or the Supreme Court is involved, the Solicitor General must concur. But there are several steps that must be taken before these officials even see the proposed pleadings. The Indian Resources Section in the Lands Division is usually responsible for scrutinizing a proposed suit or brief for forwarding to the Assistant Attorney General. Other Sections in that Division may become involved depending on the circumstances surrounding each case. Justice Department attorneys do not act on a direct request from an Indian tribe, but wait for such requests from the Interior Department.

How the Interior Department handles such requests has varied over the years. When Reid Chambers was Associate Solicitor, he would review requests directly from tribal attorneys and outside Indian advocates, and if they were meritorious, he would forward them to the Justice Department, after getting the concurrence of the Solicitor. This procedure changed after Reid left in 1976. We were instructed to get recommendations from the Bureau of Indian Affairs (BIA) before initiating affirmative litigation on behalf of Indians, on the ground that the filing of a lawsuit should be based on a policy recommendation, not the mere predilection of a government lawyer. Additionally, the Solicitor's Office is often wholly dependent on the BIA to develop the evidentiary background necessary to prepare a litigation report, unless a tribal attorney has already done so. Thus the starting place for the initiation of Indian litigation is usually the BIA-- an important point not made by any of the witnesses on the first day of these hearings.

Another important change was made in Interior's procedure in early 1981. The authority of Field and Regional Solicitors to refer affirmative cases directly to U.S. Attorneys was withdrawn for all litigation initiated by the Department, Indian or otherwise. This "direct referral" procedure applied to routine trespasses and damage claims of under $25,000.00. Consequently, all new suits had to be approved by the Solicitor before referral to the Justice Department. This was not changed until July 1988, when much of this authority was redelegated to the Regional Solicitors by the new Solicitor's Manual. During the intervening seven years, however, many Interior agency officials, including those in the BIA, stopped making such requests, for all practical purposes, because of the perception that such initiatives would probably be squelched at some point in the months-long review process, either in the Solicitor's Office or at the Justice Department. This situation is now being rectified, as Regional and Field Solicitors have recently been directed to conduct training for the agencies on how to initiate offensive litigation.

Thus, as you can see, the initiation of Indian litigation by the federal government is a lengthy, deliberative process. As most Indian tribes are now represented by their own attorneys, they often choose to file their own lawsuits, rather than wait for the U.S. to make that decision. If tribal attorneys believe that U.S. involvement is critical, they usually do most of the groundwork necessary for Interior's litigation report rather than wait on the BIA. For example, a few years ago we were contacted by the attorney for the Zuni Pueblo asking us to seek to enjoin an Arizona landowner from blocking the path of Zuni religious leaders who conduct a quadrennial procession to ancient religious sites west of their reservation in New Mexico. This request required prompt attention; it received it and the injunction was obtained.

In such cases a policy recommendation from the BIA or the Assistant Secretary is still necessary, though that is rarely a source of further delay. If another agency of the Department has an interest in the proposed litigation, whether or not in conflict with BIA and the Tribe, then it is given an opportunity for input prior to the Solicitor's litigation recommendation to the Justice Department. If a non-Interior agency has an interest, that might be negotiated by Interior and the Tribe before the transmittal of a recommendation to the Justice Department, or that might be done by Justice Department attorneys after receipt of Interior's litigation report.

Because a tribal litigation request receives so much scrutiny in the federal clearance process, it is my impression that many tribal lawyers prefer not to avail themselves of it. When the federal reviewers approach a law reform type of request with a skeptical rather than an advocacy viewpoint, full clearance seems well nigh impossible. That is why I agree with Reid Chambers that the federal attorneys must be Indian advocates, especially within the Interior Department since one hurdle too many there has the effect of foreclosing any Justice

Department consideration of a request. And it effectively excludes the federal government from any involvement in the development of the jurisprudence.

However, I am skeptical of any dramatic institutional change in order to increase affirmative litigation on behalf of Indians. President Nixon's proposal of an Indian Trust Counsel Authority was certainly an enlightened and honorable one in its day. But 18 years later the landscape has changed. Scores of Indian lawyers are now representing Indian tribes and bringing suits on their behalf. Thus, a decrease in federal litigation is largely a function of historical process. Moreover, the creation of a small, separate entity to litigate Indian claims will isolate the Indian role in the federal government. Because the Solicitor General is charged with reviewing all federal positions in the appellate courts to insure consistency and correctness in litigation policy, the Indian position is virtually always aired and is often adopted when other agency interests are at stake. This is possible because a significant share of Indian litigation in which the U.S. is a party is defensive in nature, where pro-Indian policies are defended in federal court, and Indian water rights are asserted in general stream adjudications. A separate Indian litigating entity, I fear, will create a bureaucratic rationale for mainstream officials never asserting the Indian position when there is a conflict. Whatever system is employed to process Indian litigation, we are always going to be dependent upon the competency, sympathy, and wisdom of the lawyers who review the cases and effectuate federal Indian policy. The important thing is to imbue them with an informed view of the trust responsibility.

I do not view BIA involvement in the clearance process as a structural problem-- though there are many management problems in its effectuation, which I discuss later in my statement. The proposition that policy decisions be separated from legal services in the government is a sound one. It insures the crafting of an intelligent litigation policy, one consistent with the programs funded by Congress to benefit Indian people. The new Solicitor's Manual articulates this distinction:

> "Attorneys in the Office of the Solicitor will respect the distinction between law and policy when evaluating issues and advising clients. Attorneys may never characterize a client's policy choice as the only legal option, solely for the convenience of the client. Consistent with this principle, advice given should normally include an array of legal options . . . ."

Getting policy clearance from the BIA or Assistant Secretary is rarely a problem. All the Assistant Secretaries for Indian Affairs I have worked with have been willing to ask the Solicitor's Office to advocate Indian rights when a rights violation has been called to their attention. Ross Swimmer's opposition to Sen. Laxalt's bill to ratify the California-Nevada Interstate Stream Compact was instrumental in allowing the Department to be an obstacle to passage of the bill in its original form, and thus protected the water rights of the Pyramid Lake and Walker River Paiute Tribes. Ken Smith's support in 1981 for an appeal of an Idaho federal court decision which misinterpreted the off-reservation treaty grazing rights of the Shoshone-Bannock Tribes was similarly instrumental in overcoming Forest Service opposition. Where this procedure breaks down usually involves the inability of the BIA to provide the technical evidence or raw data necessary to construct a litigation report and prove a case. Larger tribes with experienced counsel are able to develop this evidence themselves, sometimes with BIA funding. Smaller tribes, and tribes with inexperienced attorneys, may not be able to provide this important information, or to understand its importance.

The distinction between legal services and policy in the Department of the Interior also often serves Indian advocacy. I have often seen top policymakers in the Department give little weight to the BIA position in a matter of inter-agency controversy because the BIA position is viewed as knee-jerk, inarticulate advocacy. "It's our trust responsibility," without more, is rarely persuasive. Independent counsel and advocacy from the Solicitor's Office has often carried the day for advocacy-oriented Indian policy.

Litigation on behalf of Indian Allottees

Where I believe the federal government has fallen far short of its responsibilities in the Indian litigation area is in representation of the rights of Indian allottees and their heirs. Allotments are products of the now-rejected federal policy of dismantling tribal governments and their reservations. Early in this century federal policies further eroded the Indian land base by pushing allottees to accept fee patents and place their lands on the tax rolls. In eastern Oklahoma the restricted allotments of Indians of the Five Civilized Tribes were made subject to state court jurisdiction to speed the removal of restrictions. Today the remaining allotments are usually owned by multiple Indian heirs. The tracts may be isolated, and the Indian owners absent. Trespass is not uncommon; nor is the failure of permittees and lessees to make prompt rent payments. Partition of these tracts among the Indian heirs is difficult, and is often an unsatisfactory solution to land management and productivity. A 1987 federal court decision in New Mexico held, in effect, that allotted lands may not be leased for mineral production without the consent of 100% of the Indian ownership, an increasingly difficult consensus to achieve. Thus, the owner of a small fraction of an allotment can prevent profitable resource development.

These allotted lands, millions of acres of them, are the poor relation in the family of federal Indian policy. Unless the stakes are high enough, tribal attorneys rarely bring suits on their behalf. That is viewed as the responsibility of the federal government. Some Indian landowners are eligible for federally-funded legal services, but many have little to do with the management or supervision of their own lands and thus aren't aware that a lawyer's assistance may be necessary.

BIA officials at the lowest bureaucratic tier are ostensibly responsible for these allotted lands; but this being the era of Indian tribal self-determination, their energies are often focused on the programmatic needs of their constituent tribes. While there are certainly capable and dedicated public servants in the Bureau, I often perceive an institutional indifference to the needs of Indian allottees. When I was a legal services lawyer on the Navajo Reservation in 1973, I saw non-Indian BIA officials, often confronted by a language barrier, reluctant even to call upon or discuss important issues with Indian allottees. Today, with most BIA employees now Indian, I still see an institutional reluctance to advise allottees of their options and rights-- for a lot of stated reasons: there are too many to contact, tribal requests get priority, and not enough time. At best this is paternalism; at worst neglect. Since, as I pointed out earlier, the litigation initiation process begins in the BIA, this inattention is critical.

There is also a fair amount of ignorance in the BIA on how to develop the information and evidence necessary to assert allottees' rights. Some of this problem will be solved through effective litigation training of BIA personnel by attorneys in the Solicitor's Office. But there are critical gaps in expertise. Too often, when a category of Indian rights violations has been suspected, federal grantsmanship becomes the easy answer to the problem. Tribes or other Indian organizations are funded to study and provide a report on the problem. This report is then submitted by the BIA to the Solicitor's Office; and we have found that these reports often lack relevant or admissible evidence necessary to assert the claims. As Regional Solicitor, I have encouraged better coordination with local BIA offices, asking BIA officials to involve us earlier rather than later so that the allottees' claims may be asserted economically, efficiently and effectively. Some officials have responded enthusiastically; some view this as an incursion on their turf.

One success story is the Creek Nation. The BIA's realty functions have been contracted to the Tribe pursuant to Public Law 93-638, and the tribal staff works closely with my office in the assertion of allottee rights. This also saves us time, as insubstantial claims that do not merit litigation are filtered out in the early stages of the review process. Self-Determination Act contracts are not a simple answer either. Tribal staff may or may not be as effective as the Creek Nation's. Again, training is all-important. But policy indifference can be found in tribal bureaucracies, too--especially where allottee rights are a tribal political issue. Sometimes tribal lands and Indian allotted lands stand in competititon for limited federal funding, or resource claims are in direct conflict, such as in the Hollowbreast case in the 1970's.

The Supreme Court recognized in 1987 that Indian allotments constitute vested property rights protected by the Constitution. The Court also has permitted breach of trust actions to be brought against the federal government by Indian allottees. As Indian tribes more and more shape their own tribal governmental destinies, the BIA, the Department of the Interior, and Congress will find some unfinished business: the protection and assertion of the right of Indian allottees.

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KENNETH P. BALLEN, CHIEF COUNSEL

February 23, 1989

President George H.W. Bush
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Re: American Indian Policy

Dear Mr. President:

We write in our capacities as members of the Special Committee on Investigations of the Senate Select Committee on Indian Affairs. We plan to write you later in the year, submitting the Special Committee on Investigations' full report and legislative recommendations on a wide variety of other topics. We are writing today on only one aspect, our collective concern that there be a more formal, institutionalized process for the coordination of American Indian policy beginning with the White House.

Recently, our Committee heard testimony on the federal government's legal representation of American Indians. The testimony, held on January 30th and scheduled to continue today, raises significant concerns about whether the United States is adequately fulfilling its fiduciary duties to protect the property rights of American Indians' rights to land, water, forest, hunting, fishing and mineral resources. As we are sure you will agree, legal representation is at the very core of the federal government's trust responsibility to American Indians. The inherent conflicts facing the federal trustee arise not only in legal matters but also in policy decisions.

President Reagan's 1983 message on American Indian Policy states, in pertinent part:

> "Our policy is to reaffirm dealing with Indian tribes on a government-to-government basis and to pursue the policy of self-government for Indian tribes without threatening termination.
>
> "In support of our policy, we shall continue to fulfill the federal trust responsibility for the physical and financial resources we hold in trust for the tribes and their members. The fulfillment of this unique responsibility will be accomplished in accordance with the highest standards." (emphasis added)

The policy-making role was formally given in the second term of the Reagan Administration to the Intergovernmental Relations Office, but there was no individual nor group of individuals who actively participated in and coordinated American Indian policy. Such leadership is essential.

In Fiscal Year 1989, total governmental funding for Indian programs was estimated by the Office of Management and Budget to be $3.1 billion. The 1987 Office of Management and Budget estimates reflect the participation of 12 federal departments and agencies, involving some 73 programs.

Our hearings have raised issues that will undoubtedly result in proposed legislation, but significant administrative steps may be taken now, by the White House, the Office of Management and Budget, and other federal departments and agencies, most notably the Departments of the Interior and Justice. Our previous witnesses before the Special Committee on Investigations have all called for significant reform:

- Brad Patterson, a 14-year veteran of the Eisenhower, Nixon and Ford White House staffs and author of the recently published book The Ring of Power: The White House and its Expanding Role in Government, stressed that "Presidential initiatives are merely useless without surveillance and follow-through by the Presidential staff itself." He suggested the creation of "an Assistant Secretary-level cabinet subcommittee on Indian Policy";

- Leonard Garment, former Special Counsel to President Nixon and Washington attorney, described the Nixon White House as having an "open door" in American Indian policy-making and advocated the creation of an "Indian Trust Counsel Authority" which would "insure that, in situations of conflict, the Indians would receive independent U.S. government representation in the courts";

- Reid Chambers, former Associate Solicitor for Indian Affairs, Department of the Interior and Washington attorney, called for "establish[ing] institutional advocates within the Executive Branch for the Indian position" and noted "a telling absence of new affirmative litigation to protect Indian rights filed in the last few years by the Department of Justice; and

- Louis F. Claiborne, former Deputy Solicitor General, Department of Justice from 1964-1970 and 1978-1985 and the primary Solicitor responsible for arguing American Indian cases before the Supreme Court, suggested the establishment of "two or three high-level positions within the government for officials whose sole responsibility is the vindication of Indian rights" because the problem of adequately representing the legal interests of the Indians is "inherent in the current process and calls for remedies beyond mere changes of personnel."

Our witnesses testifying today include former Solicitor Generals Professor Archibald Cox and Dean Erwin Griswold; former Deputy Attorney General and former Federal Judge Harold Tyler; the acting and former Assistant Secretary of the Interior for Indian Affairs, Pat Ragsdale and Ross Swimmer; former Labor Secretary and Under Secretary of the Interior Ann McLaughlin; and former Assistant Solicitor for Indian Affairs and current Southwest Regional Solicitor, Tim Vollmann. All of them will testify as to the complexity and conflicting nature of American Indian legal representation and policy making. Some of them will testify that there are clear derelictions of the federal government's trust responsibility.

We urge you to consider our call for active and coordinated policy making at all levels of the government, most notably at the White House, the Office of Management and Budget, and the Departments of the Interior and Justice. Today, we are not sending you specific policy and legislative proposals but, rather, a call of concern to reaffirm our federal commitment to the American Indians. Instead, we prefer to have a meeting as soon as is practically possible with whomever you designate to hear our concerns about the need for more coordinated policy-making.

We also draw to your attention President Nixon's recent letter of January 26, 1989, wherein he expresses his continuing concern that "the first Americans are coming in last as far as the priorities of the federal government are concerned" (see Attachment).

The most important and significant indication of your Administration's commitment to helping alleviate the deplorable conditions on most Indian Reservations would be the formal designation of a member of the White House staff whose primary responsibility will be issues affecting American Indians. This designation would send a signal throughout the Indian communities of your dedication to America's first inhabitants.

In closing, we would like to refer to a most appropriate declaration in your Inaugural Address: "Great nations, like great men, should keep their word". This was first said by Justice Hugo Black in his dissenting opinion in Federal Power Commission v. Tuscarora Indian Nation, 362 U.S. 99, 142 (1969). Your words echo American values and legal traditions that go back two centuries.

Thank you for your consideration.

Respectfully,

Dennis De Concini

Dennis DeConcini, Chairman
Special Committee on Investigations

John McCain, Co-Chairman
Special Committee on Investigations

Thom A Daschle

Thomas A. Daschle, Member
Special Committee on Investigations

APPENDIX

FEBRUARY 27, 1989

STATEMENT OF WILLIAM P. RAGSDALE, ACTING ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, BEFORE THE UNITED STATES SENATE SELECT COMMITTEE ON INDIAN AFFAIRS SPECIAL COMMITTEE ON INVESTIGATIONS

February 27, 1989

Mr. Chairman, and Committee Members, this afternoon we are here to discuss: (1) The Navajo Indian Nation's purchase of the Big Boquillas Ranch; (2) Child abuse and neglect on Indian reservations and; (3) Indian contracting. Before we get into the discussions, I would like to provide a brief summary of each issue.

BIG BOQUILLAS RANCH PURCHASE

During the past several weeks, this Committee has heard testimony regarding the circumstances surrounding the purchase of the Big Boquillas Ranch by the Navajo Tribe. Let me just briefly cover the Bureau's involvement in the Navajo Tribe's purchase of the Big Boquillas Ranch. I believe the Bureau acted responsibly in this matter. The then Area Director Wilson Barber is to be commended for his diligence in pursuing the matter as far as he possibly could. He made very effort to inform Navajo Chairman Peter MacDonald and every council delegate that the purchase price of $33.4 million was not reasonable in view of the Bureau's own review.

In April, 1987, a Navajo Tribal Council resolution approved the purchase of the ranch. The Tribe routinely asked our Navajo Area Office to review the appraised price. The price of $33.4 million which the Tribe intended to pay, caused a concern, especially in view of the fact the same ranch had been advertised in national business publications for the last two to three years for $25 million. Our Area Office notified the Tribe that we could not agree with the appraised price which the Tribe intended to pay.

Our Area Director wrote to Chairman MacDonald advising him that the price of $33.4 million was too high and that instead of $68 per acre that the Tribe intended to pay, that the property was worth only from $40 to $60 per acre, some $8 million less than the Navajo offered price of $33.4 million. A copy of that correspondence to Chairman MacDonald was sent to every member of the Navajo Tribal Council. The Tribe apparently went ahead with the purchase and used a total of some $8 million of funds which were not held in trust.

When the Area Director was asked to approve a draw down from Navajo trust funds to complete the acquisition, he withheld approval on the basis that the full tribal council had not approved the budget amendment. He asked the Chairman for an amendment to the tribal budget stating specifically that the requested funds were to be used for the purchase of the Big Boquillas Ranch.

When presented with the authorizing resolution, the Area Director asked the Washington headquarters office for advice. He was aware that then Assistant Secretary Ross Swimmer had asked the Interior Department's Inspector General to investigate the purchase.

Additionally, the Field Solicitor stated the subsequent tribal authorization specifying the funds were to be drawn down were in order and the authorization was proper from a legal perspective. The Inspector General for the Department was also advised of the pending request to drawn down funds to complete the acquisition which he had under investigation. The Inspector General advised he could not release any information which could be used for disapproving the release of these funds because of the ongoing Grand Jury proceedings.

Based upon the the facts stated above, there was not sufficient reason to disapprove the amendment of the budget which was apparently used to make the second payment on the land acquisition. Committee staff has inquired in view of the controversy concerning this request why the Bureau of Indian Affairs did not disapprove the questionable acquisition. My response is that we do not exercise responsibility to approve by line items a tribal budget in this era of self-determination. The Bureau exercises its responsibility for the release of Trust funds by insuring that proper tribal authorization is given and that any items which are questionable are brought to the tribe's attention. Additionally, we ensure the funds are available and are ready to be withdrawn from government investments. We do not as a practice supervise tribal programs paid from general tribal revenues or from unrestricted trust accounts. I believe the action the Bureau took in this instance was appropriate.

CHILD ABUSE AND NEGLECT

In May of 1987, the Bureau of Indian Affairs (BIA) and Indian Health Services (IHS) entered into a Memorandum of Agreement (MOA) outlining minimum standards for the establishment of child protection teams and mandatory child abuse and neglect reporting and referral systems.

As the Assistant Secretary indicated in his April 2, 1987, cover memo to the field:

> "Child Abuse and Neglect is a growing concern within Indian Country. In an attempt to better cope with the increasing incidences of such cases and to acquire better data, you are directed to establish, formally, Child Protection Teams under these advanced guidelines."

The directive went to BIA and IHS staff with the recommendation that every effort be made to include existing tribal child abuse teams and other tribal governmental and community groups. Most team members report that the team approach helps them provide services to their clients.

As a follow-up, the Bureau has included child abuse training for staff and tribal personnel in its social services functions, judicial services, law enforcement and education. Reporting systems are being improved; the method for providing background checks for key personnel involved with children has been revised and a tribal model child protection code was developed. A team from the Bureau of Indian Affairs/Indian Health Services National oversight Committee recently studied the Billings Area child protection effort to identify strengths and weaknesses of the Area's approach. The team was also to provide technical assistance to the Area and to identify issues which may require national attention. The Committee also met with the Arizona Inter-Tribal Council and conducted a forum of child workers from throughout the United States to identify barriers to child protection. These will both be followed up with specific plans of action.

The problems with coping with child abuse and neglect are complex, and cut across many service agencies and jurisdictions. The Bureau admits that much more can and should be done to enhance the protection and well-being of our Indian children. The Bureau of Indian Affairs/Indian Health Service National oversight Committee for Child Protection has identified a number of initiatives for action including: (1) revising the child welfare regulations; (2) developing policy on treatment of suspected perpetrators; (3) identifying and drafting corrective legislation; (4) facilitating communication among the state/tribal/local and federal entities; (5) evaluating and monitoring implementation of present policies, (6) assessing training needs and; (7) emphasizing child protection as a priority at all levels. There are many other needs.

Therefore, the Bureau will continue to work with tribal, state and federal governments in identifying incidents, and resources to meet the needs of the children and their families.

The Bureau stands ready to work with Congress to improve on the capabilities of Child Protection Teams, and work with any other entities that may be capable of addressing the growing concern.

INDIAN CONTRACTING

In fiscal year 1988 the contracts the Bureau entered into that had a dollar value of over $25,000 totaled over $488 million. The majority of these contracts (4,200 contracts valued at $376 million) were with Indian tribes or organizations under the authority of Public Law 93-638. Contracts (179) entered into under the Buy Indian Act totaled over $54 million. Of this number, 63 of the contracts totaling over $38 million, were for the construction of roads and bridges and 113 contracts totaling over $14 million were for a variety of services, ranging from design contracts with architect-engineering firms to contracts for trash collection. Other commercial contracts with non-Indian firms totaled over $58 million. We also entered into over 51,000 minor transactions totaling over $79 million. However, we do not at this time have a breakdown as to how much of the $79 million went to Indian firms.

As staff has previously testified, the Act of June 25, 1910, which is commonly known as the Buy Indian Act, could be termed an "Ancient Act", in that language which authorized purchases from Indians in the "open market" first appeared in the Indian Appropriations Act of May 15, 1886, and at various times and in various ways after that until it was made permanentin 1910. However, the Bureau did not utilize the Act to any great extent until 1963, when it was faced with the need to expeditiously obligate funds made available under Public Law 87-658, the Public Works Accelerated Act. Since that time the policy with respect to the Act has varied from substantial Indian ownership .. to 51% Indian owned .. to 100% Indian owned and controlled .. to 51% Indian owned, with owners directly involved in the day-to-day management and receiving a majority of the earnings. In the past few years there have been isolated complaints received of front organizations. However, we have only been able to establish this in three instances. Two other instances turned out to be Indian business enterprises that had subcontracted more than was allowable under their contracts. We are not aware of any allegations of corruption similar to that reported earlier in these hearings associated with the Buy Indian Act. This does not mean we are not aware of the potential for abuse of the Act. It is for this reason that we are most anxious to receive the benefit of your investigative staff's efforts.

This concludes my prepared statement. I will be happy to answer any questions the Committee may have.

TESTIMONY OF DON NESSI

DIRCTOR OF THE OFFICE OF INDIAN HOUSING

FEBRUARY 27, 1989

My name is Dominic Nessi and I am the Director of the Office of Indian Housing for the U.S. Department of Housing and Urban Development. I have been in this position since September of 1988.

Prior to this, I served for three years as the Director of the Office of Indian Programs in the Denver region where I was responsible for all HUD programs relating to Indian reservations in a seven state area which included Colorado, North and South Dakota, Montana, Wyoming, Utah and Nebraska.

The Office of Indian Housing, located here in Washington, D.C., is responsible for the development of policies, regulations and procedures which implement the laws passed by Congress. In addition, OIH is responsible for programmatic oversight of the six Indian field offices. I report directly to the Assistant Secretary for Public and Indian Housing.

There are currently 180 Indian housing authorities in operation in the United States today. They manage approximately 61,000 housing units, of which over two-thirds were developed under the homeownership programs. Over seventy percent of the IHAs have developed at least one new housing project in the past three years. Annual contracting for the development of new units alone has been in excess of $115 million per year since the early 1980's.

In general, HUD acts as the financier in the development of these units by providing grant authority to the IHAs sufficient to develop units of a safe, decent, sanitary and modest design. The IHA, under the terms of the Annual Contributions Contract (ACC), acts as the primary party responsible for the design and development of the project. The IHAs are governed by a board of commissioners and are operated on a daily basis by an executive director. The IHA performs all contracting and hiring functions associated with the development and management of its housing inventory.

In addition to its role as financier, HUD acts as a monitor to insure that federal statutes and regulations are met and, depending on the administrative capacity of the individual IHA, provides technical assistance as necessary.

Because your primary interest today is Indian Preference, I would like to provide your committee with some background on HUD's efforts in this area. I have prepared a chronology which lists the Department's initiatives which have resulted in its current Indian preference policy.

As you know, the statutory basis for Indian Preference in HUD's Indian Housing programs comes from the Indian Self-Determination and Education Assistance Act which was enacted January 4, 1975. Although this legislation was specifically directed at federal programs for Indians administered by the Secretary of the Interior through the Bureau of Indian Affairs and what was then the Secretary of Health, Education and Welfare through the Indian Health Service, HUD, utilizing Section 7(b) of the Act, established an administrative policy which required that Indian housing authorities give preference to Indians in matters of employment and contracting and sub-contracting.

A proposed rule was published on September 19, 1975 which established HUD's policy for implementing Indian preference, but did not include specific methods for implementation. A final rule was published on March 9, 1976. In summary, this policy called for Indian preference as long as it did not result in higher costs or greater risks of non-performance. As in all cases, the contract was awarded to the lowest responsive bid or the best proposal.

Almost immediately after, in June of 1976, and in response to public comments for institution of procedures to facilitate the award of construction contracts, the Department waived those portions of the newly published regulation limiting award to the lowest bid and resulting in higher cost. Through a handbook notice, HUD established four procedures for implementing Indian preference; two which allowed for Indian only bids and two which permitted a cost differential.

In January, 1979, HUD issued new proposed Indian Housing regulations and again revised portions of the Indian preference requirements. The cost differential method was eliminated as unworkable since it reduced competition in bidding. In November 1979, a final regulation was issued which allowed the Indian only preference methods. At that time the Department restated its policy that contracts should be awarded to the lowest responsive bidder.

On September 26, 1984 the Department issued an Indian Preference statement of policy which provided clarification and guidance in implementing the Indian preference regulation which had been in existence for the previous five years and gave notice to the public that HUD was in the process of preparing a proposed rule for publication in the Federal Register. Public comments were invited at that time.

Based on the comments received, the Department issued a proposed Indian Preference rule on January 3, 1986. After considering additional comments received from the public, a Final Rule was published December 4, 1986 which constitutes the existing regulation. The effective date of this regulation was March 15, 1987.

On June 30, 1988, the Department issued technical changes to the Indian Preference regulation in the Federal Register. These corrections did not substantially alter the intent or purpose of the regulation which was in effect.

Since the current final rule was published, HUD, in an attempt to clarify its policies, has on a number of occasions provided training to HUD field attorneys and Indian housing staff. We have spoken to numerous local IHAs and have conducted a training session at the national convention of the National American Indian Housing Council.

In addition, each Office of Indian Programs has conducted its own training sessions for the IHAs in their regions.

As you can see the process of implementing Indian preference as it pertains specifically to HUD's Indian housing program has evolved over a number of years. I list these efforts simply to demonstrate that the Department has made an effort to implement the concept of Indian preference as set forth by Congress.

These efforts continue today as my office is currently working with a number of tribal leaders, IHAs, Tribal Employment Rights Offices and other interested parties in an effort to develop a Indian preference regulation that continues to meet the changing needs of Indian country.

I would like to point out that HUD's Indian Preference regulation will be somewhat different than the Indian Preference regulations for other federal agencies who contract directly with private entities. As I said earlier, HUD is authorized under the U.S. Housing Act of 1937 to provide financial assistance to IHAs and as a result must rely on IHAs to perform the contracting function for housing development and must bear the primary responsibility for insuring that the concept of Indian preference is achieved.

I should also point out that IHAs face the same difficulties that HUD would face if it were directly implementing these policies. There are competing demands and interests even within the Indian community. Questions as to when and how to apply Indian preference have not been fully answered. The financial and human resources necessary to completely investigate the validity of companies seeking to qualify under Indian preference regulations are simply not available. Finally, there are no penalties with any teeth which deter contractors from falsely using the Indian preference process to gain an edge in competing for IHA contracts.

Despite, these difficulties IHAs contracted over eighty percent of its grant dollars in FY 1988 with Indian firms. The quality of housing built since 1980, when more comprehensive Indian preference regulations became effective, is far superior to that of units built earlier despite the concerns of many that Indian architects and contractors could not handle the challenge. Similarly, despite fears that Indian preference would substantially increase the cost of housing, we find just the opposite is true. Per unit costs have decreased substantially in the past five years.

In summary, HUD has made and will continue to make every possible attempt to implement an Indian preference policy which meets the requirements of Congress and furthers the economic successes of Native Americans. We sincerely hope that the result of this Committee will be a clearer definition of what Indian preference is, who it is intended to serve, and who has primary responsibility for implementing it and how.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB 27 1989

Mr. Ivan Sidney, Chairman
Hopi Tribal Council
P.O. BOX 123
Kykotsmovi, Arizona 86247

Dear Chairman Sidney and Members of the Council:

I ask that you deliver the following message to the Hopi people and all other persons who are residing on your reservation as you determine appropriate. You are authorized to release the contents of this letter to anyone you feel appropriate for the purpose of communicating my sincere regret that this human tragedy occurred. I am advised that to ensure confidentiality and privacy it would not be appropriate for me to send an individual letter to the victims and their respective parents.

In behalf of the United States Government and in particular the Department of Interior, Bureau of Indian Affairs, I express my personal sorrow and regret of the occurrence of child abuse perpetrated by a former employee of the Bureau of Indian Affairs.

That "the people of peace" have had to endure this tragedy is a sad commentary of our times. Nonetheless, it has occurred and it is time to assess if enough is being done. Your current efforts and the efforts by this organization and the U.S. Public Health Service cannot ever rectify or compensate for this human tragedy and its impact on your community. I am confident that the Hopi people and others who reside within your reservation will provide the leadership to heal the wounds. However, I want you to know that we stand ready to do everything we can to assist tribal leadership and the reservation community to foster a movement to prevent and make other Indian communities aware of this problem. I hope and pray the efforts to try and heal the wounds to the body, mind, and spirit of the children and their families as well as the extended families and friends can be effectively healed in the long run.

As you are aware, I know and have worked with many of you during the course of my Bureau career. I have always had a great deal of respect for the Hopi culture and respect that Hopi people have managed to endure and maintain a way of life that is the oldest in the Northern American Continent. I am aware that your way of life predates most civilizations by centuries and with time and diligence to tend properly to the wounds created, the efforts of the Hopi people and others living in the community will succeed.

You have my personal commitment while I am Acting Assistant Secretary for Indian Affairs that we will give this issue priority attention. In this regard, I am willing to travel to the Hopi Reservation to meet with whomever the Council feels is appropriate. I want to understand this problem and what measures the tribal leadership, community leaders, the people themselves, and federal officials need to take to deal with this tragedy and ensure insofar as it is humanly possible that it does not happen again.

Lastly, I want you to know that Bureau officials have attempted to deal with this problem in a responsible way. If we have appeared insensitive or uncaring that was not the case. If we have failed to be supportive we are recommitted to help. Our employees stand ready to help but not replace your leadership within the reservation. In the final analysis, you must provide the solutions and enlist the aide of your people.

By copy of this letter, all cognizant officials in the Bureau are informed of this commitment. Please contact me at your earliest convenience and provide me with your advice on how we can approach this problem together.

I do not wish to impose myself on you to solve the problem; however, I am willing to assist in any way I can.

Sincerely,

/s/ W. P. Ragsdale

William P. Ragsdale
Acting Assistant Secretary - Indian Affairs

cc: Secretary of Interior
Undersecretary of the Interior
Deputy to the Assistant Secretary (Operations
Deputy to the Assistant Secretary (Tribal Services)
Deputy to the Assistant Secretary/Director of Education
Phoenix Area Director
Superintendent, Hopi Agency
Phoenix Area Educational Program Administrator
Superintendent of Education, Hopi Agency
Director, Indian Health Service, U.S. Department of Health and Human Services, Rockville, MD

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

STATEMENT

BY

DR. CRAIG VANDERWAGEN

DIRECTOR, DIVISION OF CLINICAL/PREVENTION SERVICES

OFFICE OF HEALTH PROGRAMS

BEFORE THE

UNITED STATES SENATE

SPECIAL COMMITTEE ON INVESTIGATIONS

February 27, 1989

Washington, D.C.

Mr. Chairman and members of the Special Committee on Investigations:

I am Dr. Craig Vanderwagen, Director, Division of Clinical and Prevention Services of the Indian Health Service (IHS) and includes pediatric, maternal and child health, and mental health Services as part of my Division. I am pleased to be here today to represent the Indian Health Service regarding this very important and distressing problem of sexual abuse of Indian children.

I would like to submit statements presented by IHS at two hearings conducted by your parent Committee, the Select Committee on Indian Affairs, last year. The first statement is dated July 7, 1988, and the second statement is dated November 22, 1988. Both of these statements provide an overview of IHS' mental health program and its efforts in addressing the problems associated with child abuse, neglect and sexual abuse.

Mr. Chairman and members of the Committee, I will be pleased to answer any questions that you may have regarding IHS' role in addressing problems associated with the sexual abuse of Indian children.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

INDIAN HEALTH SERVICE

STATEMENT

BY

GEORGE BRENNEMAN, M.D.

MATERNAL AND CHILD HEALTH COORDINATOR

OFFICE OF HEALTH PROGRAMS

BEFORE THE

UNITED STATES SENATE

SELECT COMMITTEE

ON INDIAN AFFAIRS

NOVEMBER 22, 1988

FLAGSTAFF, ARIZONA

Mr. Chairman and Members of the Select Committee on Indian Affairs:

Thank you for this opportunity to testify on the issues of Child Abuse and Neglect (CA/N) and Child Sexual Abuse (CSA).

I am George Brenneman, a pediatrician and the Chief of the Maternal and Child Health (MCH) staff for the Indian Health Service (IHS). With me are, Dr. George McCoy, Chief, Mental Health Branch, Phoenix Area IHS, Dorothy Meyers, CNM, MCH Consultant, Phoenix Area IHS and Susan Oliver, Chief, Social Services, Whiteriver Service Unit IHS. We are pleased to represent the Indian Health Service (IHS) regarding the very important and distressing problems of Child Abuse, Neglect and Child Sexual Abuse.

The health of American Indian and Alaska Native (AI/AN) children receives priority attention by the IHS. The IHS recognizes that the well being of the AI/AN community is measured by the health of its children and the future health of the AI/AN community is secure when children of today are healthy.

The IHS provides health services through a regionalized health care system. Basic preventive and direct health care services are first provided by health workers and professionals in the field and service unit facilities. Referral, consultative and transfer linkages with secondary and tertiary facilities are then made. Within this regionalized system of health care, culturally acceptable and readily accessible preventive health care are emphasized. Today we want to share with you some of the specifics of the IHS's efforts and concerns regarding Indian child abuse and neglect.

Child abuse and neglect are priority targets in one of the 1989 IHS emphasis objectives. This IHS focus adds impetus to specific program activities being carried out by mental health, social services, alcohol and substance abuse and maternal and child health in response to Child abuse and neglect in Indian Country.

In the IHS Professional Service's Manual policies on Child Abuse and Neglect and Child Sexual Abuse are already established. These policies are currently under review and modification in order to bring them into clearer compliance with current Federal child abuse legislation, P.L. 100-294, the BIA-IHS Interagency Memorandum of Agreement (MOA), and generally accepted patient care standards promoted by professional organizations such as the American Academy of Pediatrics (AAP). In fact the proposed revised IHS policies on Child abuse and neglect are being reviewed by the AAP Advisory Subcommittee on Indian Health. Additionally, the IHS's Mental Health Program Branch is developing, in collaboration with IHS and Tribal providers, proposed policies on domestic violence. Child abuse and neglect are frequently the results of family violence which in turn are usually associated with the vicious cycle of alcoholism, depression, frustration, and unemployment, among other factors. Thus, interventions in Child abuse and neglect are ineffective and unsatisfactory unless the cycle of violence in the family unit is broken. The challenge to IHS health program professionals is to assist and evaluate the efforts of Areas and Service Units in implementing the activities within the policies.

The IHS is cooperatively and actively involved with the BIA in addressing Indian Child abuse and neglect. The BIA-IHS MOA, mentioned to earlier, has been in effect since April 1987. This memorandum calls for interagency multidisciplinary Child Protection Teams (CPT) at the IHS-BIA Area level and in the IHS Service Unit-BIA Agency levels. Responsibilities and activities for these CPT's are specified. At the national level, the BIA-IHS Oversight Committee on Child Protection, which has BIA-IHS co-chairs, meets quarterly to review field reports and to discuss and seek solutions for a host of issues that arise in establishing effective CPTs in the field. Five IHS and eight BIA representatives serve on this committee. There are also other representatives from the Department of the Interior's Policy, Budget and Administration and the Solicitor's Offices. Beginning in FY 1989, interagency teams made up of members from the Oversight Committee will conduct Area Child Protection program evaluations. The objectives of these evaluations will be to (1) review compliance with national policies, (2) identify successful program activities, (3) identify unsuccessful program activities, (4) document effectiveness and (5) identify needs that require more involvement by headquarters. This committee is becoming an important focus for BIA and IHS to consolidate their interactions on issues of Child abuse and neglect in

Indian Country. The next quarterly meeting of the National Oversight Committee is scheduled for January 17, 18, and 19, 1989. On February 7 and 8, 1989, the committee is holding a special meeting in Washington, D.C., at which time child protection workers from the field will discuss ways to overcome the barriers to reducing of Child abuse and neglect in Indian Country.

The IHS is proposing to undertake two studies related to Indian child abuse and neglect. These are in response to the need for a better data base on which to build effective programs and evaluations. The first proposed study would evaluate, over a 2-year period, IHS's involvement at all levels and stages of the management of cases of child abuse and neglect. This information would provide the basis on which to build policy, make organizational adjustments, establish funding needs and identify training needs. The second is a proposal to examine the long-term effects of child abuse and neglect. This information would give the documentation that is necessary to strengthen prevention programs designed to increase community and employee awareness and involvement. When these proposals are approved, an interagency advisory group to the studies will be established.

Child abuse and neglect are important health problems in Indian Country. Based on our most recent statistical reports from the various Bureau of Indian Affairs (BIA) Areas, the BIA-IHS Interagency National Oversight Committee on Child Protection is aware of 5244 Indian Child Protection referrals between October 1, 1987 and July 28, 1988. About two-thirds (3419) of these were suspected neglect and 10% (527) were suspected sexual abuse.

Data from the Billings Area, for example, is especially meaningful because of the commendable, cooperative work being done by BIA and IHS workers through an active Area CPT. In fact, in the Billings Area an IHS Child Abuse and Neglect and Child Sexual Abuse policy is in place and CPT's are functioning in all eight IHS Service Units. From October 1, 1987 to July 28, 1988 the Billings Area reported 995 child protection referrals. About 60% (578) were suspected neglect and 8% (79) were suspected sexual abuse. Fifty-four percent of the reports are substantiated, giving a rate of 126 cases of child abuse and neglect per 1200 children under 15 years of age per year.

The Phoenix Area CPT reviewed 457 cases of suspected child abuse and neglect in FY 1988. The Gila River Indian community's CPT responded by establishing the Beginning Alcohol and Addiction Basic Education Studies (BABES) program in the school program. BABES is a program designed to offer preventive alcohol and substance abuse education, and to teach positive living skills, to children of all ages. There are currently 13 CPTs functioning in the Phoenix Area.

The treatment of victims of child abuse and neglect is within the scope of the mission and responsibility of the IHS. Programs and personnel devoted to this are under the direction of the Mental Health Branch. However, the IHS Mental Health Program branch budget only supports about two direct, core staff per service unit. Very few are trained to assist children. Additional efforts in treatment of alcohol and substance abuse to reduce family violence are under the direction of the Alcohol and Substance Abuse Branch.

Treatment of child abuse and neglect is complex, requiring a multidisciplinary team whose members work in concert at the local level. The IHS Mental Health Branch also has implemented a national team of three members to provide consultation to tribes and service units on the prevention of family violence, including child abuse and neglect. This team is located in Albuquerque, New Mexico, in the IHS Headquarters - West Office.

There are several barriers that impede accessible and effective treatment for Indian victims of child abuse and neglect. We will mention a few, but must emphasize that, these are not necessarily unique to Indian country.

a. Without community awareness and support, effective treatment cannot be provided. There is considerable evidence of denial of child abuse and neglect in Indian communities, as is true of communities in general. A portion of the correction lies within the lifestyle and community requirements and are outside the ability of the IHS to successfully intervene.

b. The family of a child victim must be willing to participate in the treatment. This is especially true if a family member is the perpetrator. It is also true, however, when the perpetrator is outside the family.

c. Effective treatment cannot be undertaken when investigations of a suspected case and judicial review are delayed. On the one hand, inappropriate treatment may be initiated without specific documented information. On the other hand, IHS providers have occassionally been advised that treatment efforts might interfere with the investigation process. One of the functions of the local CPT is to resolve these conflicts when they occur.

d. For victims of child abuse and neglect to receive effective treatment, highly trained and experienced health professionals must be available. Additionally and most importantly, in Indian country, it is essential that these health professionals be culturally sensitive to the communities they must assist. While the IHS has a dedicated corps of professionals, finding and recruiting these specialized professionals is very difficult. Keeping IHS sufficiently staffed in this area to address the problem of child abuse and neglect is further complicated by the degree of experience needed to treat the more complex of these cases.

Presently, two situations particularly strain IHS's resources. First, it is difficult to identify available personnel for those crisis situations where a large number of children and a whole community are involved. Second, where emergency funds for mental health and other services have been made available from other resources, and these funds are then exhausted, a treatment vacuum results that is difficult for an ongoing health program to fill.

Regardless of these barriers, the IHS is committed to vigorously seeking creative ways to meet the treatment needs of Indian victims of child abuse and neglect.

In conclusion, the IHS recognizes the important health problem of child abuse and neglect affecting Indian children. It accepts responsibility to work diligently and creatively to meet the needs of these children. We also recognize that to effectively intervene in this important problem the IHS needs to cooperate with Federal, State and Tribal organizations. No one organizational entity or profession is able to prevent and treat the problem. Above all, the best interests of the children are the priority.

I will be happy to try to answer any questions the Committee may have.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Statement By

Dr. Craig Vanderwagon

Director, Div. Clinical and Prevention

INDIAN HEALTH SERVICE

Before the

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

July 7, 1988

TESTIMONY TO SENATE
SELECT COMMITTEE REGARDING
MENTAL HEALTH ISSUES

I am Dr. Craig Vanderwagon, Director, Division of Clinical and Prevention Services, Indian Health Service (IHS) and I am here today with Dr. Scott Nelson, Director, IHS Mental Health Program, Ms. Phyllis Old-Dog Cross of the IHS Mental Health Inpatient Unit at Rapid City in the Aberdeen Area, and Dr. Marion Zonnis, IHS Mental Health Program for the Navajo Area. We are here to represent the Indian Health Service in this important hearing regarding mental health needs and resources in American Indian/Alaska Native communities. We are accompanied by other officials of the Public Health Service -- Dr. Delores Parron, Associate Director for Special Populations, National Institute of Mental Health; Dr. David Heppel, Director, Division of Maternal, Child, and Infant Health, Health Resources Services Administration; and Mr. Henry Montes, Assistant Director, Office of Minority Health. The Centers for Disease Control (CDC) was unable to send a witness but each of the invited agencies has prepared an attachment for this statement, and we will arrange for any questions for CDC to be answered promptly in writing. We each greatly appreciate the opportunity to participate in this most important hearing regarding mental health needs and resources in American Indian/Alaska Native communities. My initial comments will be limited as Dr. Nelson will address Native American Mental Health issues specifically.

There is a significant upheaval in American Indian/Alaska Native communities. It is characterized by a disruption of the social fabric and it manifests as a set of behavioral problems that feeds a spiral of failure affecting both individuals and the community as a whole. It is recognizable by the problems of chemical dependency and abuse, suicide, homicide, and family violence. These are the hallmark problems that IHS and Tribal health providers confront on a daily basis in hospitals, clinics, individual homes, and communities.

Deaths associated with alcohol, suicide and accidents are significantly higher in American Indian/Alaska Native communities than in the general population. It is particularly devastating in the population of American Indians/Alaska Natives from age 25-44 years the community's potentially most productive adults. In this age group, deaths due to alcohol are almost 6 times more likely than in the general U.S. population. Deaths due to suicide are 1.5 times more frequent than in the U.S. population generally. Deaths due to accidents are nearly three times more likely than in the general U.S.population. These deaths not only take lives of individuals, but can destroy a young family, when a father or mother is no longer present to impart love, guidance, and direction. Thus the future is robbed of a solid foundation.

These health problems have reached a critical point in American Indian/Alaska Native communities. The medical care system so painstakingly built to address the scourge of TB, trauma, child birth, childhood illness, and other health problems has been very successful in addressing its targeted medical goals. The core of IHS functions is maintaining and improving the health status of American Indian/Alaska Natives. However, behavioral health issues require a different focus, and cannot be effectively addressed without community leadership and direction. The community can and must identify the issues and approaches to resolution of these health problems. The IHS can and must be an effective helping resource for community efforts, but the community must take on the controlling role, not IHS.

How can IHS be an effective resource to support community initiatives? Examples of how this might occur are to be found in the activities of the alcohol and substance abuse program of IHS. The IHS has provided technical assistance in the development of school-based and community-based prevention activities. The character and populations for these programs was described in a recent IHS publication which we are submitting for the hearing record. The IHS is collaborating with a variety of private institutions to provide training for tribal staff to expand the knowledge and expertise within the community to address substance abuse issues. At the direction of tribal coordinating committees, IHS has funded training for tribal staffs, tribal leadership, and other community members. Service delivery has also been modified based upon input and direction from communities. The alcohol action plan developed in 1985-86 is based upon significant tribal participation. An interagency initiative undertaken at the direction of Secretary Bowen has led to strong and vital coordination of departmental resources in this area.

These are all examples from the Alcohol and Substance and Abuse Program of IHS. These efforts were bases upon both legislative branch and executive branch committment to reducing chemical abuse and dependancy in American Indian/Alaska Native communities. The same sorts of program strengthening are already under-way in mental health activities. The special initiatives team of the mental health program has provided technical assistance and support to 43 communities in the last year. This approach to planned community response to mental health issues holds great promise. But it is only the beginning. Further legislative and executive branch initiative is called for.

The witnesses in our panel represent various components of the Public Health Service. The written materials and comments submitted by this group reflects their activities both independently and collaboratively. The enhancement of these activities in assuring the most effective availability of federal resources in AI/AN communities is the goal of the IHS Mental Health program.

Dr. Nelson will now provide the committee with more specifics about the IHS Mental Health Program.

Mr. Chairman and Members of the Committee:

I am Dr. Scott H. Nelson, M.D., Chief of Mental Health Programs with the Indian Health Service (IHS). I am pleased to be here today to discuss with you the Indian Health Service Mental Health Programs.

THE CURRENT STATUS OF THE MENTAL HEALTH SERVICE SYSTEM FOR AMERICAN INDIANS AND ALASKA NATIVES.

Introduction

The mission of the IHS mental health system is to provide access for all American Indian/Alaska Native persons to mental health services which are appropriate to the nature and severity of the mental illness, high quality, and sensitive and responsive to the cultural values of the individual, family and community.

The IHS national focus for mental health services for American Indians and Alaska Natives is the Mental Health Programs Branch located at IHS headquarters in Rockville, MD. The Branch is one component of the Division of Clinical & Prevention Services in the Office of Health Programs. The Branch staff work closely with tribes, IHS Area and Service Unit staff, relevant HHS and BIA components, and major Indian organizations.

Each of the twelve IHS Area offices has a full or part-time mental health consultant. In about half of the twelve IHS Area Offices, the mental health consultant also serves as the social service consultant. In one-third of the Area Offices, the mental health consultant serves as consultant for both the social service program and for the substance abuse program. The Area Offices serve to allocate mental health funds to Service Units and tribal programs, to provide technical assistance and consultation to local communities and other Area staff, and to monitor and review programs.

At the community level, delivery of mental health services is a responsibility of the local Service Unit operated either directly by IHS (75% of Service Units) or by a tribally-administered program (25% of Service Units). Tribes are increasingly assuming the responsibility for directly operating mental health service programs pursuant to the provisions of the Indian Self-Determination Act, PL 93-638.

Mental Health Problems

Studies indicate that depression is the emotional problem that occurs most frequently in Indian communities, both in adults and children. Usually the depression is related to life events such as death, serious injury, economic issues or marital dysharmony. Often depression is a result of acculturation pressures or of long-standing low self-esteem related to childhood experiences of neglect and/or physical, sexual, or emotional abuse.

Depressed feelings are frequently complicated by use of alcohol or other drugs. The combination of low-esteem, alcohol and the frustration or life circumstances unfortunately often leads to suicide, violence, or other forms of abuse. Suicide, homicide, and accidental death occur more frequently among Indian people than in the general population. The rate of death from suicide, homicide and accidents in young Indian males is more than twice the national average. Many of the accidental deaths are associated with known depression and alcohol use, and are suspected to be suicides.

Other common problems seen by mental health service programs include anxiety, phobias and uncomplicated alcoholism. Serious mental disorders such as schizophrenia and manic-depressive (bipolar) disorders appear to be uncommon in many tribal communities. Further study is required to determine whether or not the incidence of these disorders is in fact low or whether they are underreported.

The Mental Health Service System

Approximately 80 percent of the 127 IHS Service Units have implemented a formal mental health service program. The most common program model is an outpatient service which is staffed by one or more mental health professionals, often with the assistance of a local American Indian/Alaska Native mental health technician. On-call emergency mental health services are also provided outside of usual clinic or hospital hours. Consultation is provided to medical staff on mental health problems and to other service unit and/or tribal programs within staffing constraints. Specialized mental health services for populations such as children and the elderly are minimal to non-existent because of limited resources and difficulties in recruitment of trained specialists.

Inpatient services are available through a variety of mechanisms in almost all Service Units. Some IHS hospitals can accomodate non-violent psychiatric patients for a few days with the continued involvement of the mental health professional staff. More commonly, inpatient services are provided under contract with local general hospital psychiatric units or private psychiatric hospitals. Often, emergency hospitalizations and hospitalizations of long duration are provided by state mental hospitals.

The Indian Health Service operates two short-term psychiatric hospital inpatient units: one of 14 beds at the Gallup Indian Medical Center in Gallup, New Mexico, and the other of 9 beds in the Public Health Service Hospital in Rapid City, South Dakota. These units serve Indian persons from adjacent Areas and are almost always at capacity, with waiting lists for admission.

Native healers provide services in most American Indian and Alaska Native communities. These services often complement Western methods of psychological care for more serious mental disorders, and are often sufficient to resolve situations involving emotional distress.

In many Areas, state or local community mental health programs also provide services to Indian persons with emotional problems. Partial hospitalization, transitional living, and child residential mental health programs be obtained from local or state resources, if available.

Funding for Mental Health Service

In most Areas, the majority of funding for mental health services for American Indian and Alaska Natives people is provided by the line-item categorical appropriation for mental health services in the IHS budget. In fiscal year 1988, this appropriation was $12.466 million. The President's budget proposal for FY 1989 for IHS Mental Health Services is $13.091 million, an increase of $625,000.

Some Service Units use other sources of funds to purchase mental health services. These include hospital and clinic (general health) funds or contract health service funds. In addition, states and localities often provide substantial service to Indian persons through local community mental health programs. Indian people are legally eligible to receive mental health services from the state or public mental health system on the same basis as other citizens; however, they often do not use state or local services because of the perceived lack of sensitivity to Indian people and traditions.

Increased emphasis is being placed on collection of third party revenues by mental health service programs. Some Indian people carry insurance and many others are eligible for Medicaid or Medicare reimbursement.

Mental Health Staffing

As of September 30, 1987, the IHS Areas report 269 staff funded by mental health categorical funds. Of the 269 staff, 221 are direct service staff, while 48 are administrative or clerical. The 221 direct service staff include 70 mental health technicians, 61 social workers, 48 psychologists, 24 psychiatrists, 8 nurses and 10 members of other disciplines. 188 of the direct treatment staff are employed by the Indian Health Service and 33 are employed by tribal organizations. An estimated 40 to 50 additional staff are employed by tribes through contract or direct tribal funding. The estimated total of 260-270 means that, on average, about two mental health direct treatment personnel are available for each of the 127 Service Units.

Conclusion

Most IHS Service Units provide mental health services through an ambulatory mental health service program, and arrange for inpatient services through contracts or arrangements with state mental hospitals.

IHS national mental health staff are working closely with consultants and local Service Units to improve the program within the resources available. Current activities include:

- an active quality assurance program, which includes reviews of mental health programs pursuant to recently promulgated standards,

- a team of professionals available for consultation to tribes, IHS and other field personnel regarding strategies for prevention of suicide and other forms of violent behavior, and

- increased planning efforts, including the development of a national American Indian/Alaska Native mental health plan and Research Agenda (both under preparation).

This concludes my prepared statement. I will be happy to answer any questions that you may have.

Testimony for the Senate Select Committee on Indian Affairs

The Office of Minority Health (DHHS/OASH/OMH)

In the preface to the Report of the Secretary's Task Force on Black and Minority Health, Secretary Heckler confirmed the continuing disparity in the burden of death and illness experienced by minority Americans as compared with the nation's population as whole. The Report of the Secretary's Task Force on Black and Minority Health issued in August 1985, identified six principal disease categories that together account for more than 80 percent of the mortality observed among minority groups in excess of that in the white population. These are:

- Cardiovascular and cerebrovascular disease
- Cancer
- Chemical dependency
- Diabetes
- Homicide, suicide, and unintentional injury
- Infant mortality and low birthweight.

While mental health is not directly cited, each of these causes of excess deaths in Native Americans has substantial mental, emotional and behavioral health components.

The formal establishment in December 1985 of the Office of Minority Health (OMH) within the Office of the Assistant Secretary for Health, Department of Health and Human Services (DHHS) resulted from concerns raised by the Task Force Report. OMH was charged to serve as the DHHS focal point to insure implementation of the recommendations of the Secretary's Task Force Report and to monitor DHHS progress in achieving its objectives. To accomplish this, OMH works closely with the DHHS, particularly PHS, in a coordinative and advocacy role, as well as carries out programs of its own.

As part of the cycle of internal review, analysis, and planning, the OMH directs the annual inventory and evaluation of current DHHS programs addressing minority health issues through nine Health Issues Working Groups (HIWG's). The formation of the HIWG's established a departmental body responsible for identifying gaps and needs in the following issues as they relate to minority health:

- Research
- Prevention activities
- Access to and financing of health care
- Health data
- Health care manpower
- Cancer
- Cardiovascular and cerebrovascular diseases
- Chemical dependency
- Diabetes
- Homicide, suicide, and unintentional injuries
- Infant mortality.

Health of Native Americans

Native Americans have the highest rates of injury and death from non-disease causes. Motor vehicles are included in nearly half of all accidental injuries, and the rate of such accidents among Native Americans is higher than that of any other group. There may be a number of psychosocial reasons for this. Nearly one out of every four Native American households is headed by a woman, and approximately half (48 percent) of Native American women are employed outside the home. The overall educational attainment of Native Americans is the lowest of all minority groups. The 1980 Census revealed that fewer than one out of three (31 percent) have graduated from high school and that only 7 percent hold college degrees.

Likewise, median family income is well below the national level. In 1979, it was $15,900 per year, which is $7,200 below the level for whites. Twenty-nine percent of American Indian families lived in poverty in 1979; this is similar to the overall poverty rate among Black and Hispanic minorities but substantially higher than the poverty level of Asian/Pacific Islanders and of the non-Hispanic whites. The unemployment rate among American Indians in the civilian labor force in 1979 was more than 13 percent.

The mores and cultural patterns imposed upon Native Americans have disrupted their traditional way of life. A sense of powerlessness and hopelessness has often been observed as a result and is certainly related to the high incidence of alcohol abuse, suicide, depression, and obesity among this population. The medical and socioeconomic consequences of alcoholism, which is sometimes viewed as a way of coping with cultural disruption, are extensive and tragic; they include death and injury from motor vehicle accidents, assaults, family violence and disintegration, and alcohol-related disease. Alcoholism also contributes to instability of the work force.

American Indians, however, are also observed to draw upon traditional sources of strength to cope with stressors. Traditional strengths include the family, the tribe, and the land itself. Yet, in addition to the high rate of female-headed households, many American Indian children leave their homes today to go to boarding schools. Many of those who have studied the problems of the American Indian family believe that this practice has weakened, rather than strengthened, family stability. For these and other reasons, Native Americans are particularly at risk of dying from causes which are associated with poor mental and emotional health and low self-esteem, including alcoholism, other substance abuse, homicide, suicide, and unintentional injuries.

In Native Americans, eighty percent of excess deaths occurring before age 45 and 99 percent of the excess deaths up to age 70 are due to six causes. These six causes, in order of greatest contribution, are: unintentional injuries, cirrhosis, homicide, suicide, pneumonia, and diabetes. Deaths from unintentional injuries account for 48 percent of excess deaths for males and 40 percent of the excess deaths for females (up to age 45). Cirrhosis accounts for 11 percent of the male excess and 20 percent of the female excess deaths prior to age 45. Homicide accounts for 9 percent and 8 percent of the excess among American Indian males and females under age 45, respectively.

From these causes, it would appear that alcohol abuse is one of the most serious contributors to premature deaths among adult American Indians. A significant mental health factor is obviously operating to result in such outcomes. Too few Native Americans are sampled in the National Health Interview Survey to derive population-level prevalence estimates for selected diseases and disability associated with mental health. Clearly, more needs to be known about environmental and psychosocial contributors to the widespread abuse of alcohol by young Native Americans if the premature loss of life in Native Americans is to be prevented.

OMH Programs for Native Americans

In response to the recommendation of the Secretary's Task Force on Black and Minority Health to "Build the capacity of the non-Federal sector to address minority health problems," the Office of Minority Health developed and maintains a Minority Community Health Coalition Demonstration Grant Program. This Program is designed to fund projects which provide for community based risk factor reduction interventions which target specific minority populations through the work of a coalition of community-based organizations. The risk factors to be addressed in this grant program are related to the six health problem areas identified in the Task Force report which account for over 80% of the excess deaths in minority populations.

This grant program was established in Fiscal Year 1986 when it awarded its first six grants. Over 600 requests were received for copies of the application kit that first year. Over 160 completed applications were received. In Fiscal Year 1987 over 850 requests were received for copies of the application kit and six grant awards were funded from among the 138 completed applications received. Fiscal Year 1988, over 600 requests for copies of the application kit were received and about 100 completed applications received. These numbers are significant because they are symptomatic of the substantial unmet need and intense interest that exists in our minority communities for health promotion and disease prevention activities.

We believe that this unmet need surfaces in a number of ways in Native American communities. We see the mental health problems in a person's life from a holistic point of view, that is, these problems affect the entire person in relation to every aspect of his/her life and the lives of their families. Therefore, dealing with other health problems can play a significant role in getting at the mental health problem. Moreover, such a view is culture-syntonic for minority groups for whom the mind-body dichotomy is not as clear-cut as it is in Western culture. For example, one of the Office's grantees from

Fiscal Year 1986 is a coalition sponsored by the Seattle Indian Health Board to develop and maintain a project on adult children of alcoholics (ACOA).

This project set up an ACOA Indian Alcohol Prevention Team with the approach of infusing into existing tribal and urban systems the needed training and theoretical framework to more precisely address alcohol related family dysfunction and patterns. The project intervenes in this cycle of dysfunction through community education, awareness and support groups. Some observations of the project staff view alcoholism as an intergenerational disease that is passed on "...through dysfunctional behavior, excessive losses and unresolved grief." They further observe that, "As Native Americans, we also suffer from cultural depression which manifests itself in feelings of oppression, alienation, anti-social behavior, lack of positive identification to 'Indian ways,' and poor self image. Intervention is crucial to rebuilding families, tribal strength, positive cultural foundation, and community wellness." Thus it appears that strong mental health support is needed as we look to deal with other health problems such as alcoholism.

Another example from the OMH grant program regarding the relation of mental health to other health problems in Native American populations is our Injury Control Minority Health Project in Robeson County, North Carolina. About one-third of the population of Robeson County is Native American. There is a high incidence of automobile accidents among the younger Native

Americans in the County. Project staff tell us that speeding around dangerous curves is a major cause. They relate the cause for speeding to the need to demonstrate a "macho" image because of feelings of oppression, alienation and poor self image that exist among this group. Again, a public health problem exhibits a mental health dimension.

Another major way the Office of Minority Health attempts to build capacity in the non-Federal sector as well as provide needed information on minority health is through the Office of Minority Health Resource Center (OMH-RC). The Office of Minority Health Resource Center was established by the U.S. Department of Health and Human Services Office of Minority Health (OMH) in October 1987. The Resource Center maintains information on health-related resources, which target Asian/Pacific Islanders, Blacks, Hispanics, and Native Americans available at the Federal, State, and local levels. In addition to serving as a central source of minority health information, the OMH-RC works with the Office of Minority Health in identifying gaps and in stimulating the development of information resources where none currently exist. The Resource Center also fosters a reciprocal relationship with health professionals where information is not only provided, but exchanged.

The activities of the OMH-RC concentrate on the priority areas and associated risk factors and crosscutting issues identified by the Secretary's Task Force on Black and Minority Health. These activities include information and referral services, database development, development and maintenance of a national resource persons network, and the development and identification of useful publications.

OMH AIDS-Related Activities

While Blacks and Hispanics are over-represented by more than a two-to-one ratio among those with AIDS, Native Americans so far do not show a disproportionate representation among AIDS cases. However, Native Americans are very much at risk of AIDS because AIDS is a disease transmitted by behaviors which are present in every racial group. To address the behavioral aspects of education and prevention of AIDS in local communities, OMH is funding innovative local programs using community-based organizations.

In Fiscal Year 1988 OMH will support AIDS education and prevention projects through grants to minority community-based organizations and national organizations. Recognizing the need to build the capacity of minority organizations to design, implement and evaluate effective prevention/intervention programs, OMH is planning a technical assistance effort as an essential component of our AIDS program. Nine "pre-application workshops" have been conducted this year, and other technical assistance mechanisms are being planned for next fiscal year.

NATIONAL INSTITUTE OF MENTAL HEALTH (NIMH) PROGRAMS ADDRESSING THE NEEDS OF AMERICAN INDIANS AND ALASKA NATIVES

Since 1981, the primary activity of National Institute of Mental Health (NIMH) has been to support and conduct research on mental illness and on topics that are seen to promote mental health as well as to provide training opportunities to people who plan to pursue careers in mental health research.

- Mental Health Services

With enactment of the Omnibus Budget Act of 1981, 25 Federal grant programs for the support of health, mental health, and substance abuse service programs were consolidated into the "block grants" that now are provided directly to the States.

Prior to the introduction of Block Grants, NIMH had been directly responsible for the support and administration of the Federal community Mental Health Centers programs. Today, all federal funds for alcohol, drug abuse, and mental health service programs are dispensed in the form of an ADM Block Grant.

This change in funding policy does not mean, however, that the Institute, or the Agency, has no further involvement in services. The Institute, in exercising its "national leadership" role provides technical assistance or consultation to the States when it is requested. The thinking is that since the States have primary responsibility for the provision of services, they should also have the authority to determine how they are designed and organized. But there is a considerable amount of expertise at the NIMH and in other parts of the federal establishment for helping states to carry out their responsibility and the leadership role makes our collaboration possible.

Should they be interested, American Indian tribes are eligible to request professional consultation directly from the Institute if they feel there is a need for any type of technical assistance in designing and developing a mental health service program. No funding is involved; that would need to be sought through appropriate, designated agencies. But assistance is available.

The NIMH Child and Adolescent Service System Program (CASSP) is a State grant program aimed at the development of more effective and appropriate service systems for seriously emotionally disturbed children and adolescents. A major goal of CASSP is the development of service systems that are appropriate to the special needs of minority populations served by the States. The American Indian population is one of the four major cultural/ethnic minority groups served by the CASSP minority initiative.

Several CASSP grants have special foci on American Indian populations, and one, local level CASSP demonstration on Kodiak Island, Alaska, is totally native Alaskan. The Alaska State grant also has special emphasis on native Alaskan populations and has special local native projects in Bethel and in Kotzebue.

The Idaho State CASSP project includes a "paid volunteer" component providing child companions for seriously emotionally disturbed children and adolescents, with a particular emphasis of recruiting and training American Indian companions to help serve this population.

The Oklahoma State CASSP project has assumed the task of developing a statewide screening, early detection and prevention program serving American Indians who are at risk for Fetal Alcohol Syndrome. The Oklahoma CASSP has also just sponsored a national meeting on the mental health needs of American Indian Children and Adolescents, co-sponsored by the Indian Health Service.

The Wisconsin State CASSP project was instrumental in the establishment of two demonstration projects in Northern Wisconsin involving Indian tribes. These projects are funded through block grant monies.

The CASSP Technical Assistance program has a major minority focus. American Indians are one of the four minority populations within the CASSP Technical Assistance Minority Initiative. This initiative is building a base created at a National Minority Children's Mental Health Conference in 1986. At this time the major objective is the development of the model of a culturally sensitive community service system for seriously emotionally disturbed children and adolescents. This project is being co-authored by an American Indian.

CASSP is also negotiating with the Indian Health Service to develop an initiative to encourage State/IHS/Tribal collaboration in the development of State service systems for seriously emotionally distrubed children and adolescents.

The NIMH Community Support Program (CSP) serves needs of American Indians through two CSP Demonstrations in New Mexico:

1) Geriatric Population (FY 87) - $95,740 (Grant is in the second year of a three year grant).
   Target Area: Santa Fe and Sandoval Counties with assertive outreach to two American Indian Pueblos--The Pueblo of San Felipe and Teseque Pueblo.
   Goals: The project provides outreach, team crisis intervention, case management, counseling and educational workshops to its American Indian elderly. An Elderly Advocacy Group will be formed. The project

receives technical assistance, training and psychological services from the neighboring mental health center, La Buena Vida.

At Teseque Pueblo, Open-Hands, Inc., extends comprehensive mental health services to the elderly. Education of primary care physicians on needs of the targeted population is conducted and a community-based advisory board governs the program.

2) Young Adult Population with Substance Abuse (FY 87)- $159,886 grant is in its second year of a three year grant). While this project focuses mainly on the Hispanic Population services are extended to and intended to include American Indian young adults (Isleta Pueblo) in the target area.
Targeted Area: Southwest Albuquerque with special outreach to the Isleta Pueblo.
Goals: Targeted to young adults (18-40) who have a long-term disabling mental illness and substance abuse problems. The project extend assertive case management under the auspices of a satellite clinic of the University of New Mexico's Mental Health Center. The project incorporates elements of the psychosocial rehabilitation model emphasizing cultural and self esteem building activities aimed at enhancing client functioning, early and countinuous family involvement, and training and development of staff.

NIMH Program for the Homeless Mentally Ill--Activites Concerning American Indians

On July 22, 1987 tHe President signed Public Law 100-77, the Stewart B. McKinney Homeless Assistance Act. This Act authorized approximately $1 billion over fiscal years 1987 and 1988 for a comprehensive range of shelter, food, housing, health and mental health care, education, job training, and veterans assistance services. Section 611 established a "Block Grant Program for Services to Homeless Individuals who are Chronically Mentally Ill." Funds are available under this program for outreach services, community mental health services, referrals to health services and substance abuse treatment, staff training, case management, and supportive and supervisory services in residential settings. Funds are distributed to the states on the basis of a formula, weighted toward urbanized states; no state received less than $275,000. Several southwestern and northwestern states (notably Wyoming, South Dakota, Arizona, and Oklahoma) are including American Indians among the homeless mentally ill individuals who will be served by programs receiving block grant funds. Special emphasis in these states is placed on outreach services and on serving clients in a culturally sensitive manner.

On December 7-8, 1987, the NIMH Program for the Homeless Mentally Ill hosted a workshop on the "Service Needs of Minority Persons who are Homeless and Homeless Mentally Ill." Participants included researchers and service providers with expertise concerning minority homeless persons. Also present were several former consumers of mental health services and a family member who were knowledgable about minority issues. Nancy Fernandez, a human services planner and AMI member from Seattle, spoke about an innovative family support program that was started at the Coleville Indian Reservation by an American Indian social worker. The unique aspect of this support program is the inclusion of both family members and consumers.

o Research

In recent years the NIMH research program has been an increasing emphasis on mental illness specifically--the schizophrenias, depression and manic depressive illness, the anxiety disorders, and the mental disorders that occur during childhood and old age. This emphasis on mental illness is not exclusive, but it reflects a shift away from the trend in the 1970s for mental health research monies to be directed toward much broader social problems which neither the Institute nor the field really had the capacity to address effectively. It was felt the responsibility of the Institute more properly concerned the immediate needs of people who suffer mental illness. When other problems such as poverty or homelessness are seen to impinge on mental health, we attempt to work with those agencies which are directly responsible for the particular problem.

The centerpiece of NIMH research support efforts directed toward American Indians and Alaska Natives is the National Center for American Indian and Alaska Native Mental Health Research opened in April 1987 at the University of Colorado Health Sciences Center. The primary objectives of the center are to identify the psychiatric and psychological probems affecting American Indian and Alaska Native populations, to promote and coordinate research projects designed to improve mental health service delivery systems and to provide clearinghouse services to individuals interested in Native American mental health research. The center is a program of the School of Medicine, Department of Psychiatry, and is the only minority group mental health research center concerned with the mental health of American Indians and Alaska Natives. It is funded by a $1.25 million grant from NIMH and involves approximately 25 national research associates and institutional affiliates. Spero Manson, Ph.D. is the principal investigator. Funding provided in FY 1987 was $409,592.

In Fiscal Year 1987, the NIMH supported 4 other studies that will provide information on the mental health concerns of American Indians for a total of $1,090,303.

o Research Training

The Biometric and Clinical Applications Branch of the Division of Biometry and Applied Sciences is currently funding one grant project that has off-reservation American Indians as its research focus. The project is a postdoctoral fellowship for two years, to Philip D. Somervell, Ph.D., University of Colorado. In addition to receiving training in ethnographic research methods as part of this fellowship, Dr. Somervell is conducting evaluation research on a treatment program established by Denver Indian Health and Family Services for chemically dependent, off reservation Indians in the Denver area. Some of these Indians are long-term urban residents; others move between their reservation and the Denver area. The total FY 1987 cost of this project was $26,004. The projected FY 1988 cost is $27,000. Dr. Somervell's sponsor for this postdoctoral fellowship is Spero M. Manson, Ph.D., Director, National Center for American Indian and Alaska Native Mental Health Research, University of Colorado Health Sciences Center, Denver.

The Minority Research Resources Branch of the Division of Biometry and Applied Sciences Funds:

Minority Access to Research Careers (MARC) which develops minority researchers and educators in the fields of substance abuse and mental health through support of undergraduate honor students and faculty fellowships; and Minority Fellowship Program (MFP) which supports pre-doctoral fellowships for research training in mental health disciplines. One MARC trainee and 3 MFP fellows are American Indian.

o Clinical Training

Beginning July 1, 1988, the Clinical Training Branch of the Division of Education and Service Systems Liaison will support four continuation grants in its portfolio focusing on the training of American Indian students. An additional two projects are in the Educational Training Branch proposed FY 1988 spending plan.

One of the new grant projects will provide a specialized psychology internship program focusing on the assessment and treatment of seriously emotionally disturbed children and adolescents for two American Indian doctoral students in clinical psychology at the University of Colorado ($53,580).

Another important goal is to expose the five current predoctoral interns to the particular mental health problems and needs of the American Indian population during their training years.

The second training project for Fiscal Year 1988 funding is to support 10 minority psychiatric nursing students at Arizona State University ($74,084). The main focus will be to improve the existing curriculum by emphasizing special content, research, and clinical interventions related to treatment of schizophrenia and chronic mental illness. Native American Indian students comprise approximately one-third of the minority enrollment in the school of nursing.

Two of the continuation clinical training projects are located in schools of social work. The University of Utah ($88,071) has a training program for American Indians for the past 15 years. In their application, the School requested 10 student stipends per year for three years. The purpose of the training program is to clinically train ten American Indian graduate school students for practice with American Indian clients. The School of Social Work has been extremely successful in recruiting Indian students into their programs.

The remaining two continuation grants are located in departments of psychology. A program at the University of Utah ($59,217) offers M.S. degrees in counseling and school psychology and Ph.D. degrees in a APA-approved combined professional-scientific psychology program. To accommodate the bicultural and bilingual needs of American Indians, culturally relevant didactic and experimental oriented materials will be infused in the program. Training will occur partly on the campus of USU and at prearranged regional field sites located in areas with significant American Indian populations.

The second psychology grant is located at Oklahoma State University ($50,000). It offers a clinical psychology program leading to a Ph.D., and has an excellent record in recruiting and training minority students, particulary of American Indian backgroud.

CENTERS FOR DISEASE CONTROL/INDIAN HEALTH SERVICE

- COLLABORATION ON INJURY CONTROL

The Centers for Disease Control (CDC) serves as the national focus for developing and applying disease prevention and control, environmental health, and health promotion and health education activities designed to improve the health of the people of the United States. Consistent with this mission, CDC conducts and supports prevention research focused on the development and evaluation of strategies to prevent intentional (violence related) and unintentional injuries; plans, establishes, and evaluates injury surveilllance systems and facilitates such surveillance by State and local agencies; develops, implements, and evaluates demonstration programs to prevent injuries; provides technical assistance; and supports the dissemination of findings from its activities to appropriate agencies and organizations.

Recognizing that injury is the leading cause of death among Native Americans, CDC and the Indian Health Service (IHS) entered into an Interagency Agreement in 1985 to foster collaborative work on injury surveillance and intervention program development, implementation, and evaluation at three selected Indian demonstration sites. CDC has assigned a physician/epidemiologist to IHS, who is assisting with the development of an Indian Mental

Health Research Agenda. In addition, CDC has completed a comparative analysis of intentional and unintentional injuries at the three sites; these analyses have characterized the unique injury problems at each site. These findings were presented to IHS and at the annual meetings of the American Public Health Association and the U.S. Public Health Service Professional Association. Ongoing injury surveillance systems are now operating at each site to monitor trends and to provide additional information to focus and evaluate prevention efforts. Intervention program plans that encompass unintentional injuries, homicide and suicide, and injuries that are alcohol related are now under development.

HRSA

Office of Maternal and Child Health Activities Relating to the Mental Health of Native American Children

HRSA, through the Office of Maternal and Child Health (OMCH), administers a State block grant program which provides a broad range of preventive, primary care, and habilitative services to mothers and children. In FY 88 the States received $444 million through this program under the authority of Title V of the Social Security Act. In addition, 15 percent of the Title V funds are set-aside for grants administered by the national MCH staff for special projects of regional and national significance (SPRANS) in the areas of research, training, hemophilia, genetics, and special projects. A total of 460 projects were funded in FY 1987 and $78 million will be spent in FY 1988 to fund approximately 490 projects. Typical recipients of these SPRANS grants are State and local health departments; colleges and universities; and public and private hospitals, organizations, and foundations involved in providing health care to mothers and children.

Providing mental health services to Native American children is not a focus or objective of the SPRANS grant program. However, since Indian tribes and organizations representing their health care needs are eligible for SPRANS grants, a number of the SPRANS projects include Native American children in their populations served.

Over the last several years, four SPRANS projects are relevant to the mental health of Native American children:

1. The University of Minnesota developed and implemented a questionnaire that was administered in the Minnesota secondary school system in grades 7 through 12 to measure aspects of adolescent behavior and attitudes with respect to their health status and preventive care. In cooperation with the OMCH, the IHS provided funds to modify this questionnaire for use as an IHS prevention initiative and it is currently being administered nationally to collect data from Native American adolescents.

2. OMCH supported a project focused on injury prevention among Native American teenagers in New Mexico. The objectives are to study the problem, establish a clearinghouse and identify at least 5 actions to reduce adolescent injuries. Then, prevention materials and methods are to be developed and teachers will be trained in their use.

3. Another SPRANS project in New Mexico deals with the problems faced by parents of Indian handicapped and chronically ill children with respect to access to care. The study will work with families to identify cultural, institutional, and policy barriers to health care and conduct workshops designed to help parents overcome these barriers and gain effective access to care.

4. In Oklahoma, a SPRANS project, the "Coordinate for Kids Family Support Project" works with local community groups to develop informal support networks, and outreach to parents concerning crisis intervention, child abuse and effective communication. This program is directed to families with young children, including Native Americans, with disabilities and other special health care needs.

CHIEF
WASHAKIE

CHIEF
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Wes Martel - Chairman
Environmental Quality Commissioner

Orville St. Clair
Environmental Quality Commissioner

Joseph Oldman
Environmental Quality Commissioner

Wayne Felter
Environmental Quality Commissioner

February 6, 1989

Honorable Dennis DeConcini, Chairman
Special Committee on Investigations
Select Committee on Indian Affairs
United States Senate
Attn: Michael Anderson
838 Hart Senate Office Building
Washington, DC 20510-6450

Dear Chairman DeConcini:

I currently serve as Chairman of the Wind River Environmental Quality Commission, the environmental regulatory agency of the Shoshone and Arapahoe Tribes of the Wind River Indian Reservation in Wyoming. I had the opportunity to meet with a member of your staff, Michael Anderson, in Denver last week at a meeting of tribes involved actively in regulating the environments on their reservations. Mr. Anderson asked the tribal delegates in attendance whether the problems we currently are experiencing with the Environmental Protection Agency in its implementation of various environmental statutes and the administrative policy on the enforcement of environmental laws on Indian lands would be a proper subject for the scrutiny of your Committee.

In my view, the problems that we are experiencing with EPA probably are not the type that lend themselves to the kind of investigation in which your Committee is engaged. Rather, the problem, as we see it, is systemic and does not tend to involve blatant violations of federal law so much as a consistent series of administrative actions that thwart the will of Congress as expressed in the Clean Water Act and the Safe Drinking Water ACt. As an example, the Agency has yet to make available to tribes funding under Section 106 of the Clean Water Act. This failure results from a ruling from the Office of General Counsel that the Agency must promulgate regulations on such grants to tribal governments prior to the release of those funds to Indian tribes. This ruling has been followed by a painfully slow process of regulatory development, resulting in fiscal year 1988 funds set aside specifically for grants to Indian tribes having not yet been released to the tribes. Our program, in essence, has been set back a full year by this Agency foot-dragging.

Similarly, we find ourselves hamstrung by a lack of resources for the implementation of an Underground Injection Control program for our Reservation. This is so despite the fact that the Agency has promised funds previously committed to direct implementation of a UIC program on the Reservation. The administrative tangle that has prevented those funds from being released to us simply is unconscionable. Yet, no blatant violation of law exists.

I am aware of a number of similar examples relating to other tribes throughout the country. The picture that emerges is one of subtle undermining both of the tribal amendments to the Clean Water Act and the Safe Drinking Water Act, as well as the Agency's publicly-issued policy for the enforcement of environmental laws on Indian lands. I believe that this is the sort of issue that would be best presented in oversight hearings conducted by the full Select Committee.

Please feel free to be in touch if I may provide further information on these issues. I would deeply appreciate a letter of support from you to Chairman Inouye regarding our request that the full Select Committee conduct oversight hearings on EPA's implementation of its Indian policy.

Very truly yours,

Wesley Martel

Wesley Martel, Chairman
Wind River Environmental
Quality Commission

Testimony of Ivan L. Sidney

February 27, 1989

Mr. Chairman, distinguished Members of the Special Investigations Committee, as Chairman of the Hopi Tribe, let me thank you for the privilege of testifying this afternoon. Speaking for the Hopi Tribe, let me assure you that your Special Committee efforts are deeply appreciated.

Needless to say, the Hopi Tribe cherishes sovereignty and eagerly embraces the concept of self-determination. We also recognize that we do not exercise our sovereign powers in a vacuum. The federal government's trust responsibility remains a real and important element in our contemporary life. In that regard, you may be assured that we look to the Congress as the ultimate trustee in this relationship.

Historically, the federal government has abrogated its trust responsibility at virtually all levels. I would concur with Senator McCain's characterization of past federal Indian policy as one of "benign neglect." Indian affairs issues have too often been assigned a secondary priority status in the execution and management of federal programs; in the funding of such programs; and, in the policy deliberations of the Congress itself. "Oversight" has been akin not to "overseeing" but rather to "overlooking" pressing Indian issues and problems.

The work of this Special Committee is a most positive step toward rectifying this past circumstance. You have plunged into a range of important, and, indeed, sensitive issues that cry out for oversight attention. I applaud that effort as one worthy of your trust responsibility and the Hopi people wish you well in concluding the balance of your work.

This afternoon I would like to share certain thoughts on the issues of tribal corruption; contracting on Indian lands; the adequacy of our federal representation; and child sexual abuse -- all matters on which you have heard testimony to date.

With regard to tribal corruption, allow me to make several points briefly. First, I would suggest that nothing undermines meaningful self-determination, in both perception and fact, more quickly than corruption and mismanagement by Tribal leadership, a tragic circumstance which is thankfully an exception to the rule. All of us privileged to serve in a leadership capacity have a special responsibility to discharge our duties and lead our people with the utmost integrity. The failure to do so rightfully deserves the condemnation and wrath of those who have elected us. In this context, tribal corruption is purely a tribal matter -- best dealt with by the tribe itself.

On the other hand, where that corruption, whether bribery, kickbacks, or other exploitations of our people, involves the complicity or acquiescence of federal agencies charged with supporting and assisting tribal governments -- the matter is very much appropriately the concern of the Congress. We thank the Committee for efforts to identify and redress fraud and corruption in federal Indian programs -- wherever it is found to exist.

The Hopi Tribe is likewise appreciative of attention given to the issue of contracting on Indian lands. Regrettably, despite its good intentions and flashes of promise, the Buy Indian Act too often has benefited clever schemes to bilk Indians and the federal government out of funds and opportunities designed to assist genuine Indian owned enterprises. Many abuses flow, I believe, from an inadequate statutory framework for implementation of the legislation and inadequate funding to support the Act's intentions. Suggestions for remedy include:

1) Providing for contractor development and assistance (to include bid preparation, negotiations and training) so that new and existing Indian firms can become fully qualified to take advantage of opportunities.

2) Providing a centralized certification program to license and register legitimate Indian firms that might include criteria such as degree of Indian ownership, tribal enrollment requirements, distribution of profits standards, etc.

3) Finally, and importantly, providing appropriated funds to support the program. For example, too often legitimate Indian enterprises on the reservation are unable to compete with outsiders for want of providing adequate performance bonds. Help is desperately needed in this area.

Regarding the adequacy of Indian representation, let me say that the track record of the U.S. Attorney, agency solicitors and federal agencies is at best uneven -- ranging from excellent to poor. Too often federal agencies and their attorneys are burdened by conflict of interest concerns that reduce the quality of representation below acceptable levels. Problem areas include:

a) Inadequate funding for private attorneys where the U.S. Attorney is prohibited from representing tribal interests due to a potential conflict.

b) Agencies outside the BIA fail to fully recognize and take into account their trust responsibilities in developing regulations, such as those developed pursuant to the Surface Mining Control and Reclamation Act.

c) No guidelines exist to guide agencies and attorneys when program responsibilities conflict with the trust obligation owed to Indian tribes.

d) BIA lacks the technical staff to carry out responsibilities delegated them by complex statutes, such as the Surface Mining Control and Reclamation Act.

e) Inadequate consultation by federal attorneys attending to Indian matters.

f) Uneven prosecution of serious crimes in remote reservation locations.

g) Inattention by federal agencies, such as OSM, in assisting tribes in developing the capacity to regulate their own environmental and economics affairs.

Finally, Mr. Chairman, allow me to address the issue of child sex abuse -- an issue that is of special concern to the Hopi people. As you know, the Hopi Tribe suffered a tragic and traumatic experience in this regard at a BIA school on the Hopi Reservation. I know the Special Committee has heard testimony of several courageous Hopi parents of children involved and from Dr. Eidell Wasserman, who has been so extraordinarily helpful to us, as well. Accordingly, I will not indulge the panel in a recitation of the horrors of our experience beyond the following few comments:

1) The BIA and IHS were not responsive to our dilemma, despite the fact 144 victims of one teacher were involved. BIA school officials did not repond to the pleas of concerned parents -- and have never been reprimanded for not doing so. Both the BIA and IHS have expressed an ongoing reluctance to actively mobilize services for affected victims, arguing either that the Snyder Act precluded their involvement or disagreeing as to which agency had primary responsibility. Suffice it to say that but for the active involvement of my office, the Hopi Tribal Council, and the Victim Witness section of the U.S. Attorney's Office -- no therapeutic services would have

been available at all.

2) Funding for therapy programs has been inordinately slow and remains presently jeopardized. For example, a four month time period elapsed without services from either the BIA or IHS while the Hopi Tribe submitted a proposal requesting special funding. It took another eight months before funds could be identified to provide relief services-- a gross injustice to the children, and their families, victimized at the BIA day school. Further, and of current critical alarm, despite urgent pleas to the BIA and the IHS, there is, as of this moment, no funding available for continued therapy services beyond June of this year.

Few have been more attentive to this problem than has Senator McCain. I especially would like to thank him for his leadership relative to this difficult issue. I would also like to recommend that the Special Committee consider remedies that might include:

a) A disciplinary procedure for BIA school officials who neglect to respond to allegations of abuse.

b) A statutorily mandated procedure requiring current and prospective BIA teachers to disclose any history of child abuse incidents and a mechanism to ensure that such disclosures are screened, at a responsible level and in a manner consistent with privacy concerns, before any BIA teacher sets foot on an Indian reservation.

c) A clarification of the right of sexually abused children at BIA schools, and their families, to bring an action in federal court for damages arising from their injuries.

d) And finally, the establishment of an adequate federal funding program to ensure the maintenance of a thorough, consistent, and complete therapy regime for Indian victims.

Mr. Chairman, in conclusion, let me again thank you for the opportunity to appear before the Special Committee today. I know that much hard and important work lies ahead for the Committee. Please be assured that the Hopi Tribe looks forward to cooperating with your ongoing efforts in any way we can.

Thank you.

TESTIMONY

OF

CHIEF JONATHAN L. TAYLOR
PRINCIPAL CHIEF OF THE EASTERN BAND OF CHEROKEE INDIANS

ON BEHALF OF THE

EASTERN BAND OF CHEROKEE INDIANS

BEFORE THE

SPECIAL COMMITTEE OF THE SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS

FEBRUARY 27, 1989

Chairman DeConcini, Co-Chairman McCain and Senator Daschle:

Mr. Chairman DeConcini, Co-Chairman McCain, Senator Daschle and distinguished members of the Special Committee of the Senate Select Committee on Indian Affairs. I am Principal Chief of the Eastern Band of Cherokee Indians and I appreciate the opportunity to testify before your Special Committee on the several hearing topics you have addressed to date and the topics you will examine later.

Before beginning my testimony, I would like to provide you with some background on my tribe, the Eastern Band of Cherokee Indians. The Cherokee Indian Reservation is located in the western part of North Carolina directly adjacent to the Great Smoky Mountain National Park. We have a population of 10,000 which includes 6,918 enrolled members living on the Qualla Boundary. The reservation area has a high unemployment rate which averages about 45 percent. The 1980 per capita income for a family of 6 members is approximately $7,000 - $9,000. Our major revenues are derived from tourism and sale of timber as well as grants and contracts from the federal agencies.

Because of the low income and high unemployment rate on the reservation, the tribe has problems like alcoholism and child abuse, etc. These problems are of utmost concern to the Cherokee tribe. The tribe is also greatly concerned with providing employment opportunities on the reservation. I am aware that the Committee has examined in detail the problem of sexual abuse on Indian reservations. The Committee has heard the testimony of Larry Blythe, a tribal council member of the Eastern Band of Cherokee Indians and from Roxanne Howard, a juvenile services officer with the Cherokee tribe, as well as other Cherokee tribal members. They have provided the Committee many details of the problems associated with sexual abuse on the reservation and the need for more resources from the federal government concerning this problem. I am thankful that the Committee has chosen to spotlight the issue of child molestation as I think it is one of the most serious social problem facing my tribe, and other tribe's across the country. I personally feel that we are twenty years late in our endeavors and I fully support this effort.

The federal government has a crucial trust responsibility to Indian children and we must ensure that the tragedy of the BIA's failure to report pedophiles like Mr. Paul Price does not happen again. The Price case serves as a tragic case study of the BIA's failure to supervise its employees and report child abuse. I support the testimony of the witnesses who believe federal legislation should be enacted to require that sexual abuse be reported to the proper law enforcement or social service authorities.

I also believe that this legislation must be accompanied by proper funding for the treatment of both child molestation victims and perpetrators. Without this type of funding, a federal reporting law will only solve one part of this comprehensive problem.

I also understand the Committee has addressed the problem of government corruption. I believe that whenever corruption exists, whether it is at the tribal, state or federal government level, the problem must be eliminated. I feel that the BIA is just as responsible because they are suppose to see that all tribal interests are protected in all leases and land sales on Indian Trust Land. Indeed, I do not believe that tribal governments can be truly sovereign if their government officials are not held fully accountable by a complete set of both tribal and federal laws. The Committee's attempts to address this problem should not be seen as an attack on tribal sovereignty but an attempt to make all governments accountable. I am aware that the Committee supports sovereignty for tribes. In my view, the Committee's efforts to address the corruption of a few tribal leaders should not be confused with the goal of strengthening the federal government's trust relationship with Indian Tribes.

The examination of Indian gaming, BIA contracting, tribal corruption, child sexual abuse and later this spring, the examination of natural resource issues, are all necessary to find solutions to the problems of the federal government's trust relationship with Indian tribes.

Mr. Chairman, we feel that we have done an excellent job with very limited funds. We could do an even better job if our programs were funded at even the minimum level required to meet standards. Also, more of the funds you do appropriate need to get to the local level. Congress appropriates adequate funding for programs but as it goes through the governmental bureaucracy, we are left with only approximately 50% of the actual amount funded. Many times tribal funds which should be used for youth programs are having to be used to subsidize the BIA's Trust responsibilities. Many policies and regulations are mandated by the BIA, after Congress has appropriated funding and the tribes are mandated to comply with these policies and regulations are not provided additional funding for these costs. We are told that they are to be absorbed through our allocated funding. Tribes are then left with the burden of reducing their budgets drastically which means cuts in medical services, books for our school children, reduction in transportation costs, etc.

Tribes face a problem of BIA and IHS using P.L. 638 Contracting on tribes and some tribes do not have the ability to manage and operate their contracted programs because the government doesn't provide them adequate financial and technical assistance.

Child abuse is often a by-product of a dysfunctional home in which alcohol and substance abuse is a common practice. The two Indian Youth Regional Treatment Centers now operational are reporting data from their diagnostic assessments that show a dramatic increase in the number of young Indian men and women who are victims of sexual and physical abuse.

Through combined efforts of all tribes, we are trying to combat some of the medical, social and personal problems our youth are facing due to alcohol, drugs, child abuse, sexual abuse, etc. which effected these children at a very early age but did not surface until they became teenagers. Cherokee is presently renovating our old hospital to a Regional Youth Treatment Center which will serve youth from the Canadian border to South Florida to Texas. We believe that these incidents are no higher than the nationwide rates. At the same time, we believe that factors which contribute to the problems are much greater here than nationwide: inadequate funding of schools, hospital, health programs, youth programs, counseling services and high unemployment.

The problems you have heard about in Cherokee were very serious and we want you to assist us in taking every step possible to see that nothing like this could happen again. However, I would like to point out that the good far outweighs the bad and perhaps no one has told you of the good work going on at Cherokee. Today, Cherokee Schools have an active and involved School Board, Tribal Council, Tribal Leaders and Parents working for their benefit.

In our BIA Schools at Cherokee, student's test scores are consistently above the national averages. The school has a very dedicated and hardworking staff. Many programs and services for the students have been added during the past ten years. Tribal culture and heritage is being taught in our school system. Preservation of our culture and heritage is very important to us.

The School Board, through the Cherokee Boys Club (a division of the Tribe) is currently contracting approximately 46 percent of the entire school operations, including transportation, laundry, food service, federal education programs, etc.. This transportation service has earned the National Safety Council's first place safety award for the entire United States during recent years. The food service regularly earns 93 to 94 percent health rating even though the facilities were not designed for the number of students being served today. Our Chapter I and Special Education programs are earning nationwide recognition for excellence. Many Indian teacher aids have worked their way through night college to become teachers in the system.

In 1988, Cherokee Elementary School was recognized by the United States Department of Education as one of the outstanding schools in the United States and this year our high school was selected for visitation by the Department of Education to be considered for the same honor.

In 1969 - 1972, we raised private funds and constructed two Children's Homes and one Emergency Shelter for youth. These homes have served 323 youth. Our Child and Family Services Program serves hundreds of Indian families and Indian children each year.

As Principal Chief of the Eastern Band of Cherokee Indians, I realize we definitely have major problems facing our tribe. To adequately address child abuse on our Indian Reservation, we must secure increased resources so that both mental health and alcohol and substance abuse professionals can assist in the healing process that must occur on our Indian communities. I will continue to pursue financial and supportive help from Congress to assist in implementing legal, counseling, health and financial services to all youth and their families living on the Qualla Boundary. The Cherokee youth of today are our future Cherokee leaders of tomorrow. It is our responsibility to offer them every opportunity possible so that they will have a prosperous, successful life.

In closing, Mr. Chairman and distinguished members, I would like to extend my appreciation to you for the opportunity to address the Committee and I fully support its efforts. On behalf of the Eastern Band of Cherokee Indians, we are extremely grateful for the support and understanding you have provided to the Cherokee Tribe.

Testimony of John Washakie, Chairman, Shoshone Indian Tribe of the Wind River Reservation, Wyoming, Before the Special Investigative Committee of the Senate Select Committee on Indian Affairs

On behalf of the Shoshone Indian Tribe of the Wind River Reservation, Wyoming, I would like to express our appreciation, Mr. Chairman, for this opportunity to testify before the Special Investigative Committee regarding two important issues which the Committee has addressed and which are of great concern to my Tribe. First, we believe that the overlapping nature of federal agency jurisdiction on our Reservation frequently complicates and impedes the effective management of Tribal affairs. Second, we continue to be concerned about federal actions which conflict with the established federal policy of Indian self-government and self-determination. I now would like to bring to your attention several specific examples of recent problems in each area.

Let me discuss initially those instances where multiple federal agency jurisdiction has made extremely difficult the protection of vital interests of the Tribe. A specific example is the Tribe's effort to establish an underground injection control ("UIC") program for our Reservation under the 1986 amendments to the Safe Drinking Water Act and their implementing regulations. Those rules define procedures, among others, for the treatment of Indian tribes as states, and establish a timeline for the development of tribal regulatory programs. The Tribe has moved to exercise its authority under this statute through the creation of the Wind River Environmental Quality Commission, which was established by the Joint Business Council of the Shoshone and Arapaho Tribes in June, 1988.

As you already may be aware, underground injection for secondary oil and gas recovery, brine disposal, and hydrocarbon storage has been practiced on the Wind River Reservation for over three decades. Brine is disposed of in seven major aquifers at depths ranging from 5,000-10,000 feet below the surface. The Reservation also has hundreds of injection wells of various classes, including at least two hazardous waste disposal wells.

For several decades the Reservation has been the subject of a patchwork of overlapping federal regulatory scheme which has involved the U.S. Geological Survey, the Bureau of Land Management, the Bureau of Indian Affairs, and more recently, the Environmental Protection Agency. As explained above, the Tribe, pursuant to its authority under the Safe Drinking Water Act, also is proceeding to determine what its role in this regulatory scheme should be.

At the present time, this regulatory complexity is creating several problems which inhibit the development of an effective UIC program. First, from the Tribe's standpoint the Bureau of Land Management and the

Environmental Protection Agency currently are engaged in an unproductive battle for regulatory turf. In varying degrees both have jurisdiction over well permitting and monitoring of the mechanical integrity of wells, but each has different standards and conditions to be applied. Second, only recently the Environmental Protection Agency extended its jurisdiction to the Wind River Reservation and, in the course of doing so, exempted certain portions of the aquifers, all of which contain regions of potable ground water, from regulation by rule or permit. Under considerable pressure from interested oil and gas producers, the Agency also has reduced the time for mechanical integrity testing. Finally, at the very time that the Environmental Protection Agency has taken these steps, which the Tribe considers to be inconsistent with the effective regulation of underground injections, it has delayed for months the Tribe's application for very modest funding to begin its own UIC studies and programs. The Tribe was assured previously that funding would be made available in July, 1988.

A second example of the problems created by overlapping agency jurisdiction involves the Bull Lake Reservoir on the Wind River Reservation. Specifically, the operation of a large reservoir and dam on the Wind River Reservation by the Bureau of Reclamation ("BREC") has led to serious tensions among the Tribe, BREC, and the Bureau of Indian Affairs ("BIA") and non-Indian farmers on the Reservation. The BREC operating policies are based on legal opinions of the Field Solicitor of the United States Department of the Interior. These opinions, as discussed more specifically below, hold that any tribal water rights in the creek above and below the dam, and any tribal rights in fisheries below the dam, are subordinated by federal law to the rights of non-Indian irrigators to water from the reservoir. The Field Solicitor's opinions are based on a narrow construction of the governing statutes and Tribal Treaties which consistently resolves legal questions against the Tribe. The opinions also conflict with the position taken by the BIA that wildlife on the Reservation is a trust asset to be protected vigorously by federal agencies; the very valuable Tribal fishery which is affected adversely by the BREC operations, by analogy, deserves the highest duty of federal protection. In short, while applicable federal trust responsibilities in this case apply to both the BIA and the BREC, the reality is that the BREC has failed utterly to advocate on behalf of Tribal interests. The BREC instead is concerned with protecting the rights of non-Indian irrigators, based on contractual, not fiduciary obligations.

As background, pursuant to the Act of March 14, 1940, (54 Stat. 49, 43 U.S.C. § 597(a), ("1940 Act"), Congress authorized the construction of easements for a damsite to impound reservoir water. In the 1940 Act Congress provided, inter alia:

> Section 3. Easements herein granted shall not interfere with use by Indians of the Wind River or Shoshone Indian Reservation of the lands herein dealt with and the waters of Bull Lake Creek and the reservoir insofar as the use by the Indians shall not be inconsistent with the use of said lands for reservoir purposes.

The legislative history of the 1940 Act is scant and does not provide any indication of congressional intent with respect to the critical question of whether the water rights of the Tribes or the non-Indians are superior.

This past summer, drought conditions on the Reservation reduced the natural flow of Bull Lake Creek and, consequently, the supply of water for the project. The BREC consistently operated the reservoir in such a way as to supply the water needed by the non-Indian farmers. The direct result of this mode of operation, however, was the destruction, of the extremely valuable Tribal fisheries, which in both the reservoir and the creek below the reservoir, are important to the Tribe for subsistence, for religious purposes, and for the tourism trade on which the Tribe relies substantially.

In the fall of 1988, the Interior Field Solicitor in Billings, Montana, issued a memorandum to the BREC outlining its legal obligations with respect to operation of the Bull Lake Reservoir. Although the opinion's precise conclusion is unclear, it appears to state that under the 1940 Act, any Tribal water rights devoted to fisheries are subordinated to the water rights of non-Indian irrigators. Stated differently, even though the Tribe has an earlier water priority date, as confirmed by the Wyoming Supreme Court in its recent Big Horn decision, Congress, holds the Field Solicitor, subordinated that right, insofar as Bull Lake Creek and the Reservoir are concerned, to non-Indians who have later priority dates. This conclusion not only conflicts directly with decisions rendered on similar matters by the BIA, but it also evidences an utter failure of advocacy which is mandated by the United States', and thus the BREC's fiduciary obligations to the Tribe.

More specifically, in reaching his conclusions, the Field Solicitor construed ambiguities in governing statutes and treaties against the Tribes, notwithstanding the BREC's obligation under federal law to resolve any such ambiguities in favor of the Tribes. For example, Section 3 of the 1940 Act, which is cited above, is the sole provision upon which the Solicitor relies for his conclusion that the Indian water rights in Bull Lake Creek are subordinated to the water rights of the non-Indian irrigators. That conclusion is not evident on the face of the statute, which, read in [illegible] light more favorable to the Tribe, can mean that the only "subordination" which occurred was the right of Indians to use the lands covered by the reservoir and damsite easements for purposes other than a reservoir. Thus, Section 3, if interpreted consistent with established canons of construction for Indian treaties and statutes, can be read as not addressing the far more difficult question of what water rights exist as between the Tribe and non-Indian irrigators in times of shortage.

Later in his opinion the Field Solicitor does attempt to analyze the nature of any Tribal rights in the reservoir or creek. As to this issue, the Solicitor cavalierly concludes:

> The natural flow water reserved for the tribes for irrigation purposes may be dedicated for in-stream flows in such quantities and at such times as were set out by the Big Horn decree. The

> use will be further constrained by the provision of the 1940 Act . ... For example, the court identified limited irrigable lands and reserved water rights in the Bull Lake Creek watershed. Thus, in the Big Horn River adjudication the Tribes received no reserved water right for in-stream flows in Bull Lake Creek or for maintenance of pool elevations in Bull Lake Reservoir. In addition, the Tribes received no right to call upon water stored in Bull Lake Reservoir.

Memorandum from Richard K. Aldrich to Regional Director, Bureau of Reclamation, Billings, Montana, October 28, 1988 at P.6.

The Solicitor goes on to conclude that the only water which may be dedicated to fisheries protection in Bull Lake Creek is that which was awarded for irrigation of lands in the Bull Lake Creek watershed. Id. at n. 6. This conclusion, means that very little water would be available to devote to in-stream flows in the Bull Lake Creek. However, the Tribe's view is that consumptive water from any other watershed may be transferred to this creek in order to protect its fisheries. The Field Solicitor's conclusion, in short, is based on a very narrow reading of the Big Horn decision.

The conflicting views of the BREC and the BIA as to the legal status of the Tribal fisheries and related water rights makes unclear what entity - the federal government or the Tribe - is responsible to protect the fisheries. For example, a real possibility exists that the Tribe could decide to compromise on the level of fisheries protection, only to find that the BIA will seek to overturn the compromise, because of a federal trust duty to protect the fisheries.

I now would like to turn to my second area of discussion - namely, instances in which actions of the Bureau of Indian Affairs, in flat contravention of established federal policy, have impeded the exercise of Tribal self-government. Specifically, I would like to bring to the Committee's attention one very recent example of this problem which have arisen on the Wind River Reservation.

During the past five months, the Tribe has been required to appeal to the Assistant Secretary - Indian Affairs, at great expense, the highly questionable actions of the BIA in connection with the administration of the Tribe's grant for a Tribal Fish and Game Code program ("Program Grant") under the Indian Self-Determination and Educational Assistance Act. On September 8, 1988, the Program Grant was approved by the BIA with initial funding of $33,000.00. Under the Program Grant, a Tribal Fish and Game Code was implemented to replace federal regulations found at 25 C.F.R. Part 244 governing wildlife management and protection on the Wind River Reservation, and to place full enforcement responsibilities for the Tribal Fish and Game Code in the Tribe.

In mid-October, the Tribe determined that the dry summer weather and the unseasonably warm temperatures would cause game to remain in the high country rather than migrating to lower altitudes. Based on this determination, the hunting season for certain big game was extended. On

October 25, 1988, a letter from Acting Area Director D. W. Pennington was sent to the Tribe denying the extension of the hunting season. Pennington apparently was acting under the mistaken belief that the Tribal Law and Order Code, Item 21, Section I, and the federal regulations found at 25 C.F.R. Part 244, mandated that the seasons for elk, deer, and antelope were not subject to extension.

This belief was entirely incorrect. The Code authorizes exactly this discretionary authority in the Tribe, and the federal regulations ceased to have effect once the Tribal Fish and Game Code was in place. Section 244.1(a), 25 C.F.R., provides that:

> The purpose of these [federal] regulations is to ensure proper wildlife management and protection on the Wind River Indian Reservation while concurrently providing the opportunity for Tribal members to utilize the wildlife resources. This Game Code will remain in full force and effect until such time that it is replaced by a Code jointly adopted by the Shoshone and Arapaho Tribes.
> (Emphasis added.)

Thus, the Tribal Fish and Game Code is clearly the governing law for hunting and fishing by Tribal members on the Wind River Reservation.

On October 27, 1988, Acting Area Director Joseph Gourneau informed the Tribe in writing that the proposed season changes were denied. The Acting Area Director again was completely powerless to rely on the federal regulations as authority for this action because by their own terms, the regulations were without force and effect. Moreover, because the purpose of the Program Grant was the enforcement of the Tribal Fish and Game Code, and because the extension of the season by the Tribe complied with the Code, no violation of the terms or conditions of the Program Grant occurred.

A series of meetings among the Tribes, the BIA, and the Fish and Wildlife Service followed immediately thereafter, but the parties were unable to reach a final agreement. The Tribe indicated at that time its intent to continue the extension of the hunting season.

On November 3, 1988, the Tribe received two further communications from the Billings Area Office regarding this matter. The first was a letter signed by Norris M. Cole, Acting Area Director, threatening to suspend the Program Grant immediately if the Tribe did not restore the original big game hunting season by November 2, 1988. Although this letter was dated November 2, 1988, the letter was not received by the Tribe until November 3, 1988. Obviously, to the extent a reasonable notice requirement applies to the suspension of the Program Grant (and such requirement, of course, does apply), the notice given was unreasonable on its face. On November, 3, 1988, the Tribe also received a letter from Henry Graham, Contracting Officer in the Billings Area Office, transmitting an amendment to the Program Grant which suspended the Program Grant "[e]ffective immediately."

Even after suspension of the Program Grant, the Tribe continued its program of enforcing the Tribal Fish and Game Code. By correspondence dated November 9 and purportedly transmitted on November 8, 1988, Acting Area Director Norris M. Cole again admonished the Tribe, threatening to terminate the Program Grant effective immediately by a proposed amendment to the Program Grant. Mr. Cole appeared to reason as follows: enforcement of the Tribal Fish and Game Code is a "trust responsibility", and because the BIA supports a policy of limited harvest "any code adopted by the Tribe also must include this management goal." The Tribe responded by letter dated November 12, 1988, describing the precise legal basis for its extension of the hunting season, and the illegality of the suspension and threatened cancellation of the Program Grant.

Notwithstanding the facial illegality of its conduct to that point, the Billings Area Office issued correspondence dated November 16, 1988, over the signature of William Benjamin, Acting Area Director, returning operation of the game code set forth in the Code of Federal Regulations to the BIA effective immediately.

On November 16, 1988, Wind River Agency personnel seized vehicles being used by the Tribe under the Program Grant. The Tribe, at severe financial costs, was forced to resupply its wardens with vehicles and equipment to ensure continuing enforcement of the Tribal Fish and Game Code. On November 18, 1988, the Tribe, acting through the Joint Business Council of the Shoshone and Arapaho Tribes, voted to end the big game season effective thirty minutes after sunset on November 21, 1988. Tribal wardens stayed in the field to enforce the Council's action.

Although the Billings Area Office claimed to be resuming enforcement responsibility immediately, it had no wardens to carry out the enforcement. Thus, seizing the Tribal equipment, the Area Office succeeded only in guaranteeing that no one could enforce the Code. This action appeared to result from pure spite and was irrational on its face.

On November 30, 1988, the Tribe formally appealed to Assistant Secretary Ross O. Swimmer the unlawful suspension and cancellation of the Program Grant by the Billings Area Director. The Tribe requested that the actions of the Area Office be vacated and the Program Grant restored. Additionally, the Tribe expressly reserved its right to recover damages arising from the Area Director's failure to follow procedures prescribed by law in administering the Program Grant.

On December 21, 1988, the Tribe received a letter from Hazel E. Elbert, Acting Assistant Secretary, acknowledging receipt of the Tribe's appeal and advising that the appeal "has been remanded to the Billings Area Director for follow-up." This action, like the actions of the BIA in suspending and cancelling the Program Grant, finds no support in the federal regulations governing grants made pursuant to the Indian Self-Determination and Educational Assistance Act. Regulations in 25 C.F.R. Part 272 expressly require that such appeals be made to the Commissioner, now the Assistant Secretary. Nothing authorizes the Assistant Secretary to remand an appeal to the offending Area Director. Additionally, the appeal procedure set forth at 25 C.F.R. §2.19 requires that the Assistant Secretary render a "written decision" on appeals within thirty days or refer them to the Interior Board of Indian Appeals. On December 23, 1988, the Tribe received a letter from the Contracting Officer, Billings Area Office, informing them, without stating any reasons whatsoever, that the Program Grant was reinstated and that any costs incurred by the Tribe for operation of the program during the suspension was its own responsibility.

By a correspondence dated January 6, 1989, the Tribe notified Acting Assistant Secretary Hazel E. Elbert that the thirty-day time period for the "written decision" on their appeal had expired. The Acting Assistant Secretary was encouraged to render the written decision within seven days and was notified that, upon her failure to do so, the Tribe would refer the appeal to the Interior Board of Indian Appeals.

Hearing nothing further from the Assistant Secretary, the Tribe referred its appeal of the suspension and cancellation of the Program Grant to the Interior Board of Indian Appeals where the matter is currently pending.

On January 19, 1989, the Tribe also formally appealed to the Assistant Secretary the denial of all costs incurred during the suspension and cancellation of the Program Grant by the Billings Area Office. A written decision on that appeal was due from the Assistant Secretary on February 20, 1989. To date the Assistant Secretary has rendered no decision.

Moreover, the Tribe was informed by letter dated February 2, 1989, from William P. Ragsdale, Acting Assistant Secretary, that its appeal concerning costs had been remanded to the offending Area Director. These so-called "remands" are not contemplated by the federal regulations governing appeals concerning the administration of such grants. Furthermore, by avoiding the "written decision" requirement imposed on the Assistant Secretary, and instead allowing through "remand" the offending Area Director to revoke bad acts, the Area Director is free to circumvent the appeal procedure and effect a dismissal of any administrative appeal the Tribe may bring in the future for other violations of its rights.

This cynical practice of the BIA also hinders the ability of a Tribe to obtain an award of legal fees incurred in these matters. The Indian Self-Determination and Educational Assistance Act Amendments of 1988 expressly provide that the Equal Access to Justice Act applies to administrative appeals by tribal organizations in connection with their self-determination contracts. A prerequisite to such an award, however, is a "final disposition" of an appeal and some proof that the tribe is the "prevailing party." Avoidance of a written decision concerning the Tribe's current appeals appears to be directed at impairing the Tribe's ability to invoke these rights under the 1988 Amendments.

In short, the Tribe has been subjected not only to the unlawful suspension and cancellation of the Program Grant, and the denial of costs incurred by the Tribe, but also to the continuing failure of the Assistant Secretary to comply with the federal regulations governing appeal procedures. The unfortunate conclusion is that the Bureau of Indian Affairs has attempted consistently to thwart the Tribe's exercise of responsible and effective self-government.

Mr. Chairman, this concludes my prepared remarks, but I shall be happy to respond to any questions which the members of the Committee may have. The Shoshone Indian Tribe again wishes to express its appreciation for your invitation to air a number of our concerns.